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Attorneys for Defendant

CROWLEY MARITIME CORPORATION

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

THOMAS JORGENSEN AND PATRICIA  
JORGENSEN

Plaintiffs,

vs.

A.W. CHESTERTON COMPANY, et al.

Defendants.

Case No.:

**NOTICE OF REMOVAL OF ACTION  
UNDER 28 U.S.C. §1442(a)(1)  
(FEDERAL OFFICER)**

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE THAT Defendant CROWLEY MARITIME CORPORATION

(herein "CROWLEY") hereby removes to this Court the state court action described below:

**Jurisdiction**

1. This action is a civil action which may be removed to this Court by CROWLEY pursuant to the provisions of 28 U.S.C. §1442 (a)(1), in that this is a civil action commenced in a State court against the United States or any agency thereof or any officer (or any person acting

under that officer) of the United States or of any agency thereof, sued in an official or individual capacity for any act under color of such office.

2. Original federal jurisdiction is not required for removal pursuant to 28 U.S.C. § 1442(a)(1). See *Willingham v. Morgan*, 395 U.S. 402, 406 (1969) (“the right of removal under § 1442 (a)(1) is made absolute whenever a suit in a state court is for any act “under color” of federal office, regardless of whether the suit could originally have been brought in a federal court.”); *Jefferson County v. Acker*, 527 U.S. 423 (1999) (under the federal officer removal statute, suits against federal officers may be removed despite the nonfederal cast of the complaint.)

### **Intradistrict Assignment**

3. A substantial part of the events or omissions giving rise to the claim is alleged to have occurred in the County of San Francisco, and a substantial number of defendants named in the Complaint are alleged to have regularly conduct business in the County of San Francisco. This action is commenced in the San Francisco Division of the Northern District of California.

4. On January 3, 2008, plaintiffs Thomas Jorgensen and Patricia Jorgensen (“Plaintiffs”) commenced an action entitled *Thomas Jorgensen and Patricia Jorgensen vs. A.W. Chesterton Company, et al.*, in the Superior Court of the State of California, in and for the County of San Francisco, Case Number CGC 08-274494 (herein “the Complaint”). The Complaint seeks damages for personal injuries (mesothelioma) sustained by Mr. Jorgensen due to his alleged exposure to asbestos from various sources between 1965 and 1991. Mrs. Jorgensen seeks damages for loss of consortium.

5. On January 14, 2008 Plaintiffs filed an amendment to the Complaint identifying CROWLEY as a defendant. CROWLEY was first served with the Complaint the same day. This removal is therefore timely pursuant to 28 U.S.C. § 1446(b).

**Basis for Removal**

6. Plaintiffs' Complaint and Preliminary Fact Sheet indicate that Mr. Jorgensen was exposed to asbestos while he served in the United States Navy aboard the USS FLOYD COUNTY between 1965 and 1967. CROWLEY performed a dry dock on the USS FLOYD COUNTY in 1963. There are no other vessels identified in Plaintiffs' Complaint and Preliminary Fact Sheet, and CROWLEY is not associated with any of the other sources of asbestos exposure alleged by Plaintiffs. True and correct copies of Plaintiffs' Complaint and Preliminary Fact Sheet, and all other process, pleadings, and orders served upon CROWLEY in the State court action, are attached hereto as Exhibit "A" pursuant to 28 U.S.C. § 1446.

7. Federal officer removal under 28 U.S.C. § 1442(a)(1) is proper in this case because (1) CROWLEY is a 'person' within the meaning of § 1442(a)(1); (2) All of the actions attributed to CROWLEY as alleged in Plaintiffs' Complaint and Preliminary Fact Sheet, including all aspects of warnings and products related to CROWLEY's alleged actions, were performed by CROWLEY under color of federal office, specifically under the direction, control, and supervision of an officer or agency of the United States Navy, within the meaning of 28 USC § 1442(a)(1); (3) CROWLEY has a colorable federal defense to Plaintiffs' claims pursuant to the "government contractor defense", because (a) officers of the United States Navy approved reasonably precise specifications with respect to all actions, products, and warnings related to CROWLEY's work on the USS FLOYD COUNTY, (b) all actions, products, and warnings related to CROWLEY's work on the USS FLOYD COUNTY conformed to those specifications, and (c) the United States Navy had as much or more information regarding the dangers of asbestos than CROWLEY had at the time; and (4) there is a causal nexus between Plaintiffs' claims against CROWLEY and CROWLEY's work on the USS FLOYD COUNTY, which was performed under color of federal office. See *Mesa v. California*, 489 U.S. 121 (1989)(setting forth elements of federal officer

removal); *Boyle v. United Technologies Corp.*, 487 U.S. 500 (1988)(discussing government contractor defense); *Ballenger v. Agco Corp.*, 2007 U.S. Dist. LEXIS 47042 (N.D. Cal. 2007)(upholding removal by shipyard where alleged asbestos exposure occurred on Navy ship); *Fung v. Abex Corp.*, 816 F. Supp. 569 (N.D. Cal. 1992)(upholding removal where alleged asbestos exposure occurred in Navy shipyard and submarine); *Ferguson et al. v. Lorillard Tobacco Co. et al.*, 2007 U.S. Dist. LEXIS 6599 (W.D. Ohio 2007)(upholding removal where alleged asbestos exposure occurred aboard Navy ship); *Nesbitt v. General Electric Co. et al.*, 399 F. Supp. 2d 205 (S.D.N.Y. 2005)(upholding removal where alleged asbestos exposure in Navy shipyard); *Pack v. AC and S, Inc. et al.*, 838 F. Supp. 1099 (D.Md. 1993)(upholding removal where alleged asbestos exposure occurred in Navy shipyard).

8. The U.S. Supreme Court and Ninth Circuit have instructed courts to interpret 28 U.S.C. § 1442(a)(1) broadly in favor of removal. See *Arizona v. Manypenny*, 451 U.S. 232 (1981)(policy favoring removal should not be frustrated by narrow, grudging interpretations of § 1442(a)(1)); *Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1252 (9<sup>th</sup> Cir. 2006) (noting that, because it is important to the federal government to protect federal officers, removal rights under section 1442 are much broader than those under section 1441); *Ballenger v. Agco Corp.*, 2007 U.S. Dist. LEXIS 47042, 6-7 (N.D. Cal. 2007)(“The Ninth Circuit instructs that there is a ‘clear command from both Congress and the Supreme Court that when federal officers and their agents are seeking a federal forum, we are to interpret section 1442 broadly in favor of removal.’”)

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1           9.       This matter is subject to the Judicial Panel on Multidistrict Litigation Rule 7.5(e),  
2 and should be transferred as a "tag-along action" to the United States District Court, Eastern  
3 District of Pennsylvania, MDL No. 875 (In re: Asbestos Products Liability Litigation (VI)),  
4 pursuant to 28 U.S.C. § 1207. Documents supporting this transfer are filed and served  
5 concurrently herewith.  
6  
7

8 DATED: February 12, 2008 EMARD DANOFF PORT TAMULSKI & PAETZOLD LLP

9  
10 By   
11 \_\_\_\_\_

12 Andrew I. Port  
13 Cheryl A. Morris  
14 Jared A. Washkowitz  
15 Attorneys for Defendant CROWLEY MARITIME  
16 CORPORATION  
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# **EXHIBIT A**

## INDEX OF EXHIBIT A

No.	Date	Document
1	Feb. 11, 2008	DEFENDANT UNION CARBIDE CORPORATION'S OBJECTION TO COURT COMMISSIONER ACTING AS JUDGE PRO TEMPORE AT TRIAL (TRANSACTION ID#18557950) FILED BY DEFENDANT UNION CARBIDE CORPORATION
2	Feb. 11, 2008	ANSWER TO COMPLAINT (TRANSACTION ID#18557950) FILED BY DEFENDANT UNION CARBIDE CORPORATION
3	Feb. 11, 2008	DEMAND FOR STATEMENT OF DAMAGES (TRANSACTION ID#18557950) FILED BY DEFENDANT UNION CARBIDE CORPORATION
4	Feb. 8, 2008	ANSWER TO COMPLAINT (TRANSACTION ID#18504608) FILED BY DEFENDANT QUINTEC INDUSTRIES, INC.
5	Feb. 7, 2008	ANSWER TO COMPLAINT (TRANSACTION ID#18497781) FILED BY DEFENDANT HAMILTON MATERIALS, INC.
6	Feb. 7, 2008	PROOF OF SERVICE (TRANSACTION ID#18496789) FILED BY DEFENDANT CRANE CO.
7	Feb. 7, 2008	DEMAND FOR JURY (TRANSACTION ID#18496879) FILED BY DEFENDANT CRANE CO.
8	Feb. 7, 2008	ANSWER TO COMPLAINT (TRANSACTION ID#18496879) FILED BY DEFENDANT CRANE CO.
9	Feb. 7, 2008	ANSWER TO COMPLAINT (TRANSACTION ID#18496028) FILED BY DEFENDANT ALLIS-CHALMERS CORPORATION PRODUCT LIABILITY TRUST
10	Feb. 7, 2008	DEFENDANT HANSON PERMANENTE CEMENT, INC.'S OBJECTION TO ASSIGNMENT TO COMMISSIONER FOR TRIAL (TRANSACTION ID#18488947) FILED BY DEFENDANT HANSON PERMANENTE CEMENT, INC., FORMERLY KNOWN AS KAISER CEMENT CORPORATION
11	Feb. 7, 2008	DEMAND FOR JURY (TRANSACTION ID#18488947) FILED BY DEFENDANT HANSON PERMANENTE CEMENT, INC., FORMERLY KNOWN AS KAISER CEMENT CORPORATION
12	Feb. 7, 2008	ANSWER TO COMPLAINT (TRANSACTION ID#18488947) FILED BY DEFENDANT HANSON PERMANENTE CEMENT, INC., FORMERLY KNOWN AS KAISER CEMENT CORPORATION
13	Feb. 7, 2008	DEFENDANT KAISER GYPSUM COMPANY INC.'S, OBJECTION TO ASSIGNMENT TO COMMISSIONER FOR TRIAL (TRANSACTION ID#18488715) FILED BY DEFENDANT KAISER GYPSUM COMPANY, INC.
14	Feb. 7, 2008	DEMAND FOR JURY (TRANSACTION ID#18488715) FILED BY DEFENDANT KAISER GYPSUM COMPANY, INC.

15	Feb. 7, 2008	ANSWER TO COMPLAINT (TRANSACTION ID#18488715) FILED BY DEFENDANT KAISER GYPSUM COMPANY, INC.
16	Feb. 7, 2008	ANSWER TO COMPLAINT (TRANSACTION ID#18483885) FILED BY DEFENDANT GEORGIA-PACIFIC LLC, F/K/A GEORGIA-PACIFIC CORPORATION
17	Feb. 6, 2008	ANSWER TO COMPLAINT (TRANSACTION ID#18474913) FILED BY DEFENDANT AURORA PUMP COMPANY
18	Feb. 6, 2008	DEMAND FOR JURY TRIAL (TRANSACTION ID#18473370) FILED BY DEFENDANT AURORA PUMP COMPANY
19	Feb. 6, 2008	ANSWER TO COMPLAINT (TRANSACTION ID#18474913) FILED BY DEFENDANT DOWMAN PRODUCTS, INC.
20	Feb. 6, 2008	ANSWER TO COMPLAINT (TRANSACTION ID#18469868) FILED BY DEFENDANT T H AGRICULTURE & NUTRITION, LLC (SUED AS TH AGRICULTURE & NUTRITION, LLC) (SUED INDIVIDUALLY AND AS SUCCESSOR I-IN-INTEREST TO THOMPSON HAYWARD CHEMICAL CO.)
21	Feb. 6, 2008	CYPRUS AMAX MINERALS COMPANY'S OBJECTION TO ASSIGNMENT TO COMMISSIONER FOR TRIAL (TRANSACTION ID#18465233) FILED BY DEFENDANT CYPRUS AMAX MINERALS COMPANY
22	Feb. 6, 2008	DEMAND FOR JURY (TRANSACTION ID#18465233) FILED BY DEFENDANT CYPRUS AMAX MINERALS COMPANY
23	Feb. 6, 2008	ANSWER TO COMPLAINT (TRANSACTION ID#18465233) FILED BY DEFENDANT CYPRUS AMAX MINERALS COMPANY
24	Feb. 5, 2008	ANSWER TO COMPLAINT (TRANSACTION ID#18456813) FILED BY DEFENDANT ITT CORPORATION SUED HEREIN AS ITT INDUSTRIES, INC., INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO ALLIS CHALMERS, CORP. AND BELL AND GOSSETT,
25	Feb. 5, 2008	ANSWER TO COMPLAINT (TRANSACTION ID#18456271) FILED BY DEFENDANT R.T. VANDERBILT, INC.
26	Feb. 5, 2008	PROOF OF SERVICE BY ELECTRONIC SERVICE OF RICH-TEX, INC.'S ANSWER TO COMPLAINT (TRANSACTION ID#18440588) FILED BY DEFENDANT RICH-TEX, INC.
27	Feb. 5, 2008	ANSWER TO COMPLAINT (TRANSACTION ID#18440588) FILED BY DEFENDANT RICH-TEX, INC.
28	Feb. 5, 2008	ANSWER TO COMPLAINT (TRANSACTION ID#18440181) FILED BY DEFENDANT O.G. SUPPLY, INC.
29	Feb. 1, 2008	WARREN PUMPS, LLC'S OBJECTION TO ASSIGNMENT OF COMMISSIONER FOR TRIAL (TRANSACTION ID#18403913) FILED BY DEFENDANT WARREN PUMPS, LLC

30	Feb. 1, 2008	DEMAND FOR JURY (TRANSACTION ID#18403913) FILED BY DEFENDANT WARREN PUMPS, LLC
31	Feb. 1, 2008	ANSWER TO COMPLAINT (TRANSACTION ID#18403913) FILED BY DEFENDANT WARREN PUMPS, LLC
32	Jan. 31, 2008	ORDER ON STIPULATION RE: RELEASE OF RECORDS
33	Jan. 31, 2008	ORDER ON STIPULATION RE: RELEASE OF RECORDS
34	Jan. 30, 2008	DEFENDANT A.W. CHESTERTON COMPANY'S OBJECTION TO STIPULATION OF HEARING BY COMMISSIONER (TRANSACTION ID#18363396) FILED BY DEFENDANT A.W. CHESTERTON COMPANY
35	Jan. 30, 2008	DEMAND FOR JURY (TRANSACTION ID#18363396) FILED BY DEFENDANT A.W. CHESTERTON COMPANY
36	Jan. 30, 2008	ANSWER TO COMPLAINT (TRANSACTION ID#18363396) FILED BY DEFENDANT A.W. CHESTERTON COMPANY
37	Jan. 30, 2008	ANSWER TO COMPLAINT (TRANSACTION ID#18360410) FILED BY DEFENDANT GARLOCK SEALING TECHNOLOGIES, LLC
38	Jan. 29, 2008	ANSWER TO COMPLAINT (TRANSACTION ID#18360410) FILED BY DEFENDANT HILL BROTHERS CHEMICAL COMPANY
39	Jan. 24, 2008	ANSWER TO COMPLAINT (TRANSACTION ID#18248182) FILED BY DEFENDANT ELEMENTIS CHEMICALS INC., FORMERLY KNOWN AS HARCROS CHEMICAL INC., A DELAWARE CORPORATION, AS SUCCESSOR-IN-INTEREST TO HARRISONS & CROSFIELD (PACIFIC) INC.
40	Jan. 23, 2008	PROOF OF SERVICE (TRANSACTION ID#18234435) FILED BY DEFENDANT LAMONS GASKET COMPANY, INDIVIDUALLY, AS SUCCESSOR-IN-INTEREST AND PARENT ALTER EGO TO POWER ENGINEERING & EQUIPMENT COMPANY, INC.
41	Jan. 23, 2008	DEFENDANT LAMONS GASKET COMPANY'S OBJECTION TO USE OF COMMISSIONER (TRANSACTION ID#18234435) FILED BY DEFENDANT LAMONS GASKET COMPANY, INDIVIDUALLY, AS SUCCESSOR-IN-INTEREST AND PARENT ALTER EGO TO POWER ENGINEERING & EQUIPMENT COMPANY, INC.
42	Jan. 23, 2008	DEFENDANT LAMONS GASKET COMPANY'S DEMAND FOR JURY TRIAL (TRANSACTION ID#18234435) FILED BY DEFENDANT LAMONS GASKET COMPANY, INDIVIDUALLY, AS SUCCESSOR-IN-INTEREST AND PARENT ALTER EGO TO POWER ENGINEERING & EQUIPMENT COMPANY, INC.
43	Jan. 23, 2008	ANSWER TO COMPLAINT (TRANSACTION ID#18234435) FILED BY DEFENDANT LAMONS GASKET COMPANY, INDIVIDUALLY, AS SUCCESSOR-IN-INTEREST AND PARENT ALTER EGO TO POWER ENGINEERING &

		EQUIPMENT COMPANY, INC.
44	Jan. 23, 2008	ANSWER TO COMPLAINT AND REQUEST FOR JURY TRIAL (TRANSACTION ID#18228726) FILED BY DEFENDANT KELLY-MOORE PAINT COMPANY, INC.
45	Jan. 16, 2008	OBJECTION TO STIPULATION OF HEARING BY COURT COMMISSIONER [ASBESTOS-RELATED CASE] (TRANSACTION ID#18093281) FILED BY DEFENDANT SAN FRANCISCO GRAVEL COMPANY
46	Jan. 16, 2008	ANSWER TO COMPLAINT (TRANSACTION ID#18093281) FILED BY DEFENDANT SAN FRANCISCO GRAVEL COMPANY
47	Jan. 16, 2008	ANSWER TO COMPLAINT (TRANSACTION ID#18090310) FILED BY DEFENDANT SOCO WEST, INC., FKA BRENNTAG WEST, INC.
48	Jan. 14, 2008	AMENDMENT TO COMPLAINT (TRANSACTION ID#18093281) FILED BY DEFENDANT SUED HEREIN AS DOE 1 TO BE CROWLEY MARITIME CORPORATION
49	Jan. 3, 2008	PRELIMINARY FACT SHEET FILED BY PLAINTIFF JORGENSEN, THOMAS JORGENSEN, PATRICIA
50	Jan. 3, 2008	NOTICE TO PLAINTIFF
51	Jan. 3, 2008	ASBESTOS, COMPLAINT FILED BY JORGENSEN, THOMAS JORGENSEN, PATRICIA AS TO DEFENDANT A.W. CHESTERTON COMPANY ALL ASBESTOS DEFENDANTS DOES 1 THRU 300, INCL. SUMMONS ISSUED, JUDICIAL COUNCIL CIVIL CASE COVER SHEET FILED CASE MANAGEMENT CONFERENCE SCHEDULED FOR DEC. 17, 2008

# **EXHIBIT 1**

1 John R. Brydon [Bar No. 083365]  
2 Brian H. Buddell [Bar No. 166103]  
3 Josette D. Johnson [Bar No. 195977]  
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10 Attorneys for Defendant  
11 UNION CARBIDE CORPORATION

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SUPERIOR COURT – STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO – UNLIMITED JURISDICTION

THOMAS JORGENSEN and PATRICIA  
JORGENSEN,

Plaintiff(s),

vs.

A.W. CHESTERTON COMPANY, et al.,

Defendants.

(ASBESTOS)  
Case No. CGC-08-274494

DEFENDANT UNION CARBIDE  
CORPORATION'S OBJECTION TO COURT  
COMMISSIONER ACTING AS JUDGE PRO  
TEMPORE AT TRIAL

TO PLAINTIFF AND HIS ATTORNEYS OF RECORD HEREIN:

Pursuant to Local Rule 6.1(c), defendant UNION CARBIDE CORPORATION  
hereby objects to a Court Commissioner acting as Judge Pro Tempore of the Trial Courts at  
the trial of the instant action.

Dated: February 11, 2008

BRYDON HUGO & PARKER

By: 

John R. Brydon  
Brian H. Buddell  
Josette D. Johnson  
Attorneys for Defendant  
UNION CARBIDE CORPORATION



Jorgensen, Thomas & Patricia  
San Francisco County Superior Court Case No. CGC-08-274494  
LexisNexis Transaction No. 18557950

**PROOF OF SERVICE**

I am a resident of the State of California, over the age of 18 years, and not a party to the within action. My electronic notification address is service@bhplaw.com and my business address is 135 Main Street, 20<sup>th</sup> Floor, San Francisco, California 94105. On the date below, I served the following:

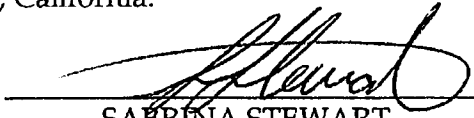
DEFENDANT UNION CARBIDE CORPORATION'S OBJECTION TO COURT  
COMMISSIONER ACTING AS JUDGE PRO TEMPORE AT TRIAL

on the following:

LEVIN SIMES KAISER & GORNICK  
44 Montgomery Street, 36th Floor  
San Francisco, CA 94104  
Fax: (415) 981-1270

- X By transmitting electronically the document(s) listed above as set forth on the electronic service list on this date before 5:00 p.m.
- o By placing the document(s) listed above in a sealed envelope and placing the envelope for collection and mailing on the date below following the firm's ordinary business practices. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal service on the same day with postage thereon fully prepaid at San Francisco, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- o By placing the document(s) listed above in a sealed envelope designated for Federal Express overnight delivery and depositing same with fees thereupon prepaid, in a facility regularly maintained by Federal Express, addressed as set forth above.

I declare under penalty of perjury that the above is true and correct.  
Executed on February 11, 2008, at San Francisco, California.

  
SABRINA STEWART

# **EXHIBIT 2**

1 John R. Brydon [Bar No. 083365]  
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6 Attorneys for Defendant  
UNION CARBIDE CORPORATION

7  
8 SUPERIOR COURT – STATE OF CALIFORNIA  
9 COUNTY OF SAN FRANCISCO – UNLIMITED JURISDICTION

10 THOMAS JORGENSEN and PATRICIA  
JORGENSEN,

11 Plaintiff(s),

12 vs.

13 A.W. CHESTERTON COMPANY, et al.,

14 Defendants.

(ASBESTOS)  
Case No. CGC-08-274494

ANSWER OF UNION CARBIDE  
CORPORATION TO COMPLAINT FOR  
PERSONAL INJURY – ASBESTOS

15 COMES NOW Defendant UNION CARBIDE CORPORATION (“Union Carbide” or  
16 “Defendant”) denying liability for itself and any alternate entities named in the complaint,  
17 and answering plaintiff’s Complaint for Personal Injury - Asbestos (hereinafter the  
18 “Complaint”), on file herein, admits, denies, and alleges as follows:

19 **GENERAL DENIAL**

20 Under the provisions of Section 431.30(d), California Code of Civil Procedure, this  
21 answering defendant denies each and every allegation of plaintiff’s Complaint and the  
22 whole thereof, and denies that plaintiff has been damaged in any sum or amount  
23 whatsoever, or at all, and denies that plaintiff is entitled to recover damages of any kind in  
24 any amount whatsoever from Union Carbide.

25 **RESERVATION OF RIGHT TO TRIAL BY JURY**

26 Union Carbide reserves the right to a trial by jury.  
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1 AFFIRMATIVE DEFENSES

2 FIRST AFFIRMATIVE DEFENSE

3 Failure to State a Cause of Action

4 This answering defendant alleges that plaintiff's Complaint and each of the causes of  
5 action for relief alleged therein, fails to state a cause of action against this answering  
6 defendant.

7 SECOND AFFIRMATIVE DEFENSE

8 Contravention of Defendant's Constitutional Rights to Due Process of Law

9 The Complaint and each cause of action thereof, which is admittedly based upon a  
10 lack of identification of the manufacturer of, and contractor using or distributing the  
11 alleged injury-causing product, fails to state facts sufficient to constitute a cause of action in  
12 that plaintiff has asserted a claim for relief which, if granted, would contravene defendant's  
13 constitutional rights to substantive and procedural due process of law as preserved for  
14 defendant by the Fourteenth Amendment of the United States Constitution and by Article  
15 I, Section 7, of the Constitution of the State of California.

16 THIRD AFFIRMATIVE DEFENSE

17 Denial of Defendant's Constitutional Rights to Equal Protection of the Laws

18 The Complaint, and each cause of action thereof, fails to state facts sufficient to  
19 constitute a cause of action in that plaintiff has asserted claims for relief which, if granted,  
20 would constitute a denial by this Court of defendant's constitutional right to equal  
21 protection of the laws as preserved by the Fourteenth Amendment of the United States  
22 Constitution and by Article I, Section 7, of the Constitution of the State of California.

23 FOURTH AFFIRMATIVE DEFENSE

24 Unconstitutional Taking of Private Property for Public Use Without Just Compensation

25 The Complaint, and each cause of action thereof, which is admittedly based upon a  
26 lack of identification of the manufacturer, and contractor using or distributing the alleged  
27 injury-causing product, fails to state facts sufficient to constitute a cause of action in that  
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1 plaintiff has asserted claims for relief which, if granted, would constitute the taking of  
 2 private property for public use without just compensation in contravention of the Fifth and  
 3 Fourteenth Amendments to the United States Constitution and by Article I, Section 7 and  
 4 19, of the Constitution of the State of California, and the applicable California statutes.

#### 5 FIFTH AFFIRMATIVE DEFENSE

##### 6 Comparative Fault

7 This answering defendant alleges that the damages, if any, complained of by  
 8 plaintiff, were proximately caused by the negligence, fault, breach of contract and/or strict  
 9 liability of plaintiff or other defendants, firms, persons, corporations, unions, employers  
 10 and entities other than Union Carbide, and that said negligence, fault, breach of contract  
 11 and/or strict liability comparatively reduces the percentage of any negligence, fault, breach  
 12 of contract or strict liability for which Union Carbide is legally responsible, if any be found,  
 13 which liability this defendant expressly denies. Further, this answering defendant alleges  
 14 that plaintiff did not exercise ordinary care, caution or prudence to avoid the incidents  
 15 complained of herein, and said incidents and the injuries and damages, if any, sustained by  
 16 plaintiff, were directly and proximately caused and contributed to by the carelessness and  
 17 negligence of said plaintiff.

#### 18 SIXTH AFFIRMATIVE DEFENSE

##### 19 Contributory Negligence

20 This answering defendant alleges that plaintiff did not exercise ordinary care,  
 21 caution or prudence to avoid the incidents complained of herein, and said incidents and the  
 22 injuries and damages, if any, sustained by plaintiff, were directly and proximately caused  
 23 and contributed to by the carelessness and negligence of said plaintiff.

#### 24 SEVENTH AFFIRMATIVE DEFENSE

##### 25 Uncertainty

26 This answering defendant alleges that plaintiff's Complaint and all purported causes  
 27 of action therein are vague, ambiguous and uncertain, and fail to state a cause of action on  
 28

1 any theory.

2 EIGHTH AFFIRMATIVE DEFENSE

3 Laches

4 This answering defendant alleges that plaintiff unreasonably delayed in bringing  
5 this action and that such delay substantially prejudiced defendant, and that this action is  
6 therefore barred by the Doctrine of Laches.

7 NINTH AFFIRMATIVE DEFENSE

8 Statute of Limitations

9 This answering defendant alleges that plaintiff's Complaint and the purported  
10 causes of action therein are barred by all statutes of limitation, including, but not limited to,  
11 the provisions of California Code of Civil Procedure §§ 338, 338.1, 339(1), 340, 340(3) and  
12 340.2, 343, 352, 366.1, 366.2 and California Commercial Code § 2725. Plaintiff's claims are  
13 further barred by the statute of limitations of states other than California pursuant to  
14 California Code of Civil Procedure § 361.

15 TENTH AFFIRMATIVE DEFENSE

16 Failure to Mitigate

17 This answering defendant alleges that plaintiff failed to mitigate damages which  
18 plaintiff contends he suffered, and plaintiff is therefore barred from any recovery  
19 whatsoever, or alternatively, any damages found must be reduced in proportion to such  
20 failure to mitigate.

21 ELEVENTH AFFIRMATIVE DEFENSE

22 Estoppel

23 This answering defendant alleges that as a result of the acts, conduct and/or  
24 omissions of plaintiff and his agents, or any of them, and each cause of action presented  
25 therein, is barred under the Doctrine of Estoppel.

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1 TWELFTH AFFIRMATIVE DEFENSE

2 Waiver

3 This answering defendant alleges that plaintiff, by his acts, conduct and omissions,  
4 has waived the claims alleged in his Complaint and in each purported cause of action  
5 alleged therein.

6 THIRTEENTH AFFIRMATIVE DEFENSE

7 Acquiescence

8 Plaintiff acknowledged, ratified, consented to, and acquiesced in the alleged acts or  
9 omissions, if any, of this answering defendant, thus barring plaintiff from any relief as  
10 prayed for herein.

11 FOURTEENTH AFFIRMATIVE DEFENSE

12 Notice of Dangers

13 Plaintiff was advised, informed, and warned of any potential hazards and/or  
14 dangers, if there were any, associated with the normal or foreseeable use, handling, storage  
15 and in place asbestos of the products, substances, equipment and at premises in which  
16 exposure is claimed as is described in the Complaint and is therefore barred from any relief  
17 prayed for.

18 FIFTEENTH AFFIRMATIVE DEFENSE

19 Compliance with Statutes

20 This answering defendant alleges that all of its conduct and activities as alleged in  
21 the plaintiff's Complaint conformed to statutes, government regulations, and industry  
22 standards based upon the state of knowledge existing at all relevant times.

23 SIXTEENTH AFFIRMATIVE DEFENSE

24 Compliance with Specifications

25 This answering defendant alleges that the asbestos products or asbestos used or in  
26 place at any premises, if any, for which Union Carbide had any legal responsibility, were  
27 manufactured, packaged, distributed or sold in accordance with contract specifications  
28

1 imposed by its co-defendants, by the U.S. Government, by the State of California, by  
2 plaintiff's employers, or by third parties yet to be identified.

### 3 SEVENTEENTH AFFIRMATIVE DEFENSE

#### 4 No Conspiracy

5 This answering defendant alleges that Union Carbide has no liability for the acts,  
6 omissions or otherwise of any other defendant or entity because Union Carbide did not  
7 become legally responsible for the acts of any such defendant, nor entity, by any  
8 communication, alleged, implied, or actual, nor act, action, or activity, and never was, nor  
9 is, a conspirator nor co-conspirator with any other defendant or entity.

### 10 EIGHTEENTH AFFIRMATIVE DEFENSE

#### 11 State-of-the-Art

12 This answering defendant alleges that all of its activities, products, materials and its  
13 premises at issue here at all times were conducted, used, produced, marketed, and  
14 operated in conformity with the existing scientific, medical industrial hygiene and  
15 consumer knowledge, art and practice and state-of-the-art.

### 16 NINETEENTH AFFIRMATIVE DEFENSE

#### 17 No Foreseeable Risk to Plaintiff

18 The state of the medical, scientific, and industrial knowledge and practice was at all  
19 material times such that defendant neither breached any alleged duty owed plaintiff, nor  
20 knew, nor could have known, that its activities, materials, products, activities or premises  
21 presented a foreseeable risk of harm to plaintiff in the normal and expected course of such  
22 activities and use of such materials and products.

### 23 TWENTIETH AFFIRMATIVE DEFENSE

#### 24 No Right to Control

25 This answering defendant alleges that any loss, injury, or damage incurred by  
26 Plaintiff was proximately and legally caused by the negligent or willful acts or omissions of  
27 parties which Union Carbide neither controlled, nor had the right to control, and was not  
28



1 proximately caused by any acts, omissions, or other conduct of Union Carbide.

2 TWENTY-FIRST AFFIRMATIVE DEFENSE

3 Action for Relief

4 This answering defendant alleges the causes of action, if any, attempted to be stated  
5 and set forth in the Complaint, are barred by the provisions of the Code of Civil Procedure  
6 of the State of California and/or other statutes of the State of California, including without  
7 limitation C.C.P. § 338(d).

8 TWENTY-SECOND AFFIRMATIVE DEFENSE

9 Misuse and Improper Use of Products

10 This answering defendant alleges that if the plaintiff allegedly suffered injuries  
11 attributable to the disturbance or use of any product for which Union Carbide had any  
12 legal responsibility, which allegations are expressly herein denied, the injuries were solely  
13 caused by, and attributable to the unreasonable, unforeseeable, and inappropriate purpose  
14 and improper use and abuse which was made of said product by persons or entities other  
15 than Union Carbide.

16 TWENTY-THIRD AFFIRMATIVE DEFENSE

17 Due Care and Diligence

18 This answering defendant alleges that Union Carbide exercised due care and  
19 diligence in all of the matters alleged in the Complaint, and no act or omission by Union  
20 Carbide was the proximate cause of any damage, injury or loss to plaintiff.

21 TWENTY-FOURTH AFFIRMATIVE DEFENSE

22 Alteration and Misuse of Product

23 This answering defendant alleges that an insubstantial amount, if any at all, of the  
24 products containing asbestos distributed, used, supplied by defendant or used or in place  
25 at any premises owned or controlled by defendant, were not disturbed or used in the  
26 presence of plaintiff and not supplied to the plaintiff, and if so, were substantially altered  
27 by others and/or used in a manner inconsistent with the labeled directions.

28

1 TWENTY-FIFTH AFFIRMATIVE DEFENSE

2 Equal or Greater Knowledge of Hazards

3 This answering defendant alleges that any and all products containing asbestos  
4 used, distributed or supplied by defendant were distributed or supplied to, or for, persons  
5 or entities who had knowledge with respect to the hazards, if any, resulting from exposure  
6 to products containing asbestos, which knowledge is equal to or greater than the  
7 knowledge of Union Carbide.

8 TWENTY-SIXTH AFFIRMATIVE DEFENSE

9 Other Parties' Liability and Negligence

10 This answering defendant alleges that if there was any negligence or any other form  
11 of liability on the part of any of the parties named herein, it was the sole and exclusive  
12 negligence and liability of the other persons or entities and not of Union Carbide.

13 TWENTY-SEVENTH AFFIRMATIVE DEFENSE

14 Apportionment and Offset

15 This answering defendant is informed and believes and thereon alleges that  
16 plaintiff's acts and omissions, including plaintiff's agents, servants, and employees acting  
17 within the course and scope of their employment, and others, contributed to the alleged  
18 damages, injury, or loss, if any, sustained by plaintiff. Defendant requests that the Court  
19 apply the principles of apportionment and offset so as to permit the Court or jury to  
20 apportion liability according to fault and to grant defendant a corresponding offset against  
21 any damages awarded to plaintiff.

22 TWENTY-EIGHTH AFFIRMATIVE DEFENSE

23 Contribution/Equitable Indemnity

24 This answering defendant alleges, in the event it is held liable to Plaintiff, any such  
25 liability is expressly herein denied, and any other co-defendants are likewise held liable,  
26 Union Carbide is entitled to a percentage contribution of the total liability from said co-  
27 defendants in accordance with the principles of equitable indemnity and comparative  
28

1 contribution.

2 TWENTY-NINTH AFFIRMATIVE DEFENSE

3 Assumption of Risk by Plaintiff's Employer(s)

4 This answering defendant alleges that the Complaint and each cause of action  
5 alleged therein are barred on the grounds that plaintiff's employer or employers knowingly  
6 entered into and engaged in the operations, acts and conduct alleged in the Complaint, and  
7 voluntarily and knowingly assumed all of the risks incident to said operations, acts and  
8 conduct at the time and place mentioned in the Complaint.

9 THIRTIETH AFFIRMATIVE DEFENSE

10 Assumption of Risk

11 This answering defendant alleges plaintiff assumed the risk of the matters referred  
12 to in his Complaint and that plaintiff knew and appreciated the nature of the risk and that  
13 the plaintiff voluntarily accepted this risk.

14 THIRTY-FIRST AFFIRMATIVE DEFENSE

15 No Market Share

16 This answering defendant alleges that Union Carbide did not have an appreciable  
17 share of the market for the asbestos-containing products which allegedly caused plaintiff's  
18 injuries, which occurrence Union Carbide expressly denies. Accordingly, Union Carbide  
19 may not be held liable to plaintiff based on its alleged share of the applicable product  
20 market.

21 THIRTY-SECOND AFFIRMATIVE DEFENSE

22 Plaintiff Fails to Join a Substantial Market Share

23 The Complaint, and each cause of action thereof, fails to state facts sufficient to  
24 constitute a cause of action against this answering defendant, in that defendant has failed to  
25 join a substantial market share of the producers or products to which plaintiff was  
26 allegedly exposed.

27

28

1 THIRTY-THIRD AFFIRMATIVE DEFENSE

2 Insufficient Facts to Show Substantial Market Share of this Defendant

3 To the extent the Complaint asserts defendant's alleged "alternative," "market  
4 share," or "enterprise" liability, the Complaint fails to state facts sufficient to constitute a  
5 cause of action against this defendant.

6 THIRTY-FOURTH AFFIRMATIVE DEFENSE

7 Independent, Intervening or Superseding Cause

8 This answering defendant alleges that if plaintiff suffered any injuries attributable to  
9 the use of any product containing asbestos which was used, distributed or sold by  
10 defendant, which allegations are expressly denied herein, the injuries were solely caused by  
11 an unforeseeable, independent intervening and/or superseding event beyond the control  
12 and unrelated to any conduct of defendant. Defendant's actions, if any, were superseded  
13 by the negligence and wrongful conduct of others.

14 THIRTY-FIFTH AFFIRMATIVE DEFENSE

15 Not a Substantial Factor

16 This answering defendant alleges that the Complaint and each cause of action  
17 therein presented are barred on the grounds that the products, conduct, materials or  
18 premises of defendant as referred to in plaintiff's Complaint, if any, were not a substantial  
19 factor in bringing about the injuries and damages complained of by plaintiff and did not  
20 increase the risk that plaintiff would suffer the injuries and damages complained of.

21 THIRTY-SIXTH AFFIRMATIVE DEFENSE

22 Insufficient Exposure

23 Any exposure of plaintiff to defendant's activities, products or exposure to asbestos  
24 or asbestos-containing products at Union Carbide's premises was so minimal as to be  
25 insufficient to establish by a reasonable degree of probability that any such product caused  
26 any alleged injury, damage, or loss to plaintiff.

27

28

THIRTY-SEVENTH AFFIRMATIVE DEFENSENo Successor Liability

This answering defendant alleges that Union Carbide has no liability for the acts, omissions or otherwise of any other defendant or any other entity because Union Carbide did not become legally responsible for the acts of any such defendant or entity given the facts and circumstances of the pertinent transactions and never was, nor is, a successor-in-interest, a successor-in-liability or an alternate entity for any other user, manufacturer, supplier, seller, distributor or premises holder relating to asbestos or asbestos-containing products.

THIRTY-EIGHTH AFFIRMATIVE DEFENSELack of Privity

This answering defendant alleges that plaintiff has failed to state a cause of action in that the Complaint fails to allege that there was privity between defendant on the one hand, and plaintiff on the other, and furthermore, such privity did not exist between defendant on the one hand, and plaintiff on the other.

THIRTY-NINTH AFFIRMATIVE DEFENSESecondary Assumption of Risk

This answering defendant alleges that any and all products containing asbestos used, distributed or supplied by defendant were used, distributed or supplied to, or for, persons or entities who had knowledge with respect to the hazards, if any, resulting from exposure to products containing asbestos, which is equal to or greater than, the knowledge of Union Carbide, i.e. Union Carbide's liability should be reduced in proportion to the knowledge of plaintiff.

FORTIETH AFFIRMATIVE DEFENSECivil Code Section 1431.2

This answering defendant alleges that the provisions of California Civil Code § 1431.2 (commonly referred to as "Proposition 51") are applicable to plaintiff's Complaint

1 and to each cause of action therein.

2 FORTY-FIRST AFFIRMATIVE DEFENSE

3 Workers' Compensation Exclusive Remedy

4 This answering defendant alleges that the Complaint is barred by the exclusivity  
5 provisions of the California Workers' Compensation laws, including, but not limited to,  
6 California Labor Code §§ 3600, *et seq.*

7 FORTY-SECOND AFFIRMATIVE DEFENSE

8 Offset for Workers' Compensation Benefits

9 This answering defendant alleges that to the extent plaintiff herein recovered, or in  
10 the future may recover, any monies in connection with any claim for workers'  
11 compensation benefits, any amounts recovered in this action are subject to a claim by  
12 defendant for a credit or offset.

13 FORTY-THIRD AFFIRMATIVE DEFENSE

14 Express Contractual Indemnity

15 This answering defendant alleges that if plaintiff claims exposure to asbestos or  
16 asbestos-containing products at a Union Carbide premises, Union Carbide contracted with  
17 plaintiff and/or plaintiff's employer(s) for them to fully assume all responsibility for  
18 insuring plaintiff's safety, to guarantee that no hazardous condition existed, and/or to warn  
19 and protect against any such conditions, during the performance of plaintiff's work, and,  
20 further, to fully indemnify Union Carbide, and to hold Union Carbide harmless, for all  
21 responsibility and liability arising out of said work, and/or any injuries allegedly incurred  
22 by plaintiff as a result of any of said work. Union Carbide reserves all rights to assert these  
23 provisions of contractual indemnity.

24 FORTY-FOURTH AFFIRMATIVE DEFENSE

25 Consent

26 This answering defendant alleges that at all times mentioned, plaintiff consented to  
27 the alleged acts or omissions of Union Carbide.

FORTY-FIFTH AFFIRMATIVE DEFENSEUnusual Susceptibility

This answering defendant alleges that each of plaintiff's injuries and damages, if any, were proximately caused or contributed to by plaintiff's unforeseeable idiosyncratic condition, unusual susceptibility, or hypersensitivity reactions for which Union Carbide is not liable.

FORTY-SIXTH AFFIRMATIVE DEFENSEGood Faith

This answering defendant alleges that plaintiff's claim for punitive damages is barred because Union Carbide at all times and places mentioned in the Complaint acted reasonably and in good faith, and without malice or oppression towards the plaintiff.

FORTY-SEVENTH AFFIRMATIVE DEFENSESophisticated User

This answering defendant alleges that Union Carbide was under no legal duty to warn plaintiff of the hazard associated with the use of products containing asbestos or their existence at any premises owned, operated, controlled or otherwise by Union Carbide. The purchasers of said products, the plaintiff, plaintiff's employers, his unions or certain third parties yet to be identified, were knowledgeable and sophisticated users and were in a better position to warn plaintiff of the risk associated with using products containing asbestos and, assuming a warning was required, it was the failure of such persons or entities to give such a warning that was the proximate and superseding cause of plaintiff's damages, if any.

FORTY-EIGHTH AFFIRMATIVE DEFENSEWork Hazard Precautions

This answering defendant alleges that plaintiff's employer(s) was/were advised and warned of any potential hazards and/or dangers associated with the normal and foreseeable conduct with, or storage and disposal of the products referred to in the



1 Complaint, in a manner which was adequate notice to an industrial user of such product to  
 2 enable it to inform its employees to take appropriate work precautions to prevent injurious  
 3 exposure.

4 FORTY-NINTH AFFIRMATIVE DEFENSE

5 Failure to Join Indispensable Parties

6 Plaintiff herein has failed to join indispensable parties (California Code of Civil  
 7 Procedure, § 389) and the Complaint is thereby defective, and plaintiff is thereby precluded  
 8 from any recovery whatsoever as prayed for herein.

9 FIFTIETH AFFIRMATIVE DEFENSE

10 No Standing Under California Civil Code §§ 1708-1710

11 Plaintiff has no standing nor right to sue for fraud and conspiracy, breach of  
 12 warranty, deceit, or any cause of action under California Civil Code, §§ 1708-1710, and  
 13 therefore the Complaint and each cause of action thereof fails to state facts sufficient to  
 14 constitute a cause of action against this answering defendant.

15 FIFTY-FIRST AFFIRMATIVE DEFENSE

16 Plaintiff is not a Real Party in Interest

17 Plaintiff, and each of them, herein lacks legal capacity to sue and is not a real party  
 18 in interest and is thereby precluded from any recovery whatsoever as prayed for herein.

19 FIFTY-SECOND AFFIRMATIVE DEFENSE

20 Fraud and Conspiracy are Not Separate Forms of Damages

21 Fraud and conspiracy do not constitute a separate and distinct form of damages  
 22 from general damages, and, therefore, the prayer for fraud and conspiracy in addition to  
 23 general damages does not sufficiently support or constitute a separate claim for damages  
 24 against this answering defendant, but is simply cumulative and included in general  
 25 damages.

26  
 27  
 28



1 FIFTY-THIRD AFFIRMATIVE DEFENSE

2 Failure to Allege with Particularity

3 This answering defendant alleges that plaintiff's Complaint fails to set out its claims  
4 with sufficient particularity to permit defendant to raise all appropriate defenses and, thus,  
5 defendant reserves the right to add additional defenses as the factual basis for these claims  
6 becomes known.

7 FIFTY-FOURTH AFFIRMATIVE DEFENSE

8 Punitive Damage Prohibited

9 This answering defendant alleges that plaintiff's Complaint fails to state facts  
10 sufficient to support an award of punitive or exemplary damages against Union Carbide.  
11 The Complaint, to the extent that it seeks exemplary or punitive damages, violates Union  
12 Carbide's right to procedural due process under the Fourteenth Amendment of the United  
13 States Constitution, and the Constitution of the State of California, and fails to state a cause  
14 of action upon which either punitive or exemplary damages can be awarded.

15 FIFTY-FIFTH AFFIRMATIVE DEFENSE

16 Punitive Damages Prohibited

17 This answering defendant alleges that the Complaint, to the extent that it seeks  
18 punitive or exemplary damages, violates Union Carbide's right to protection from  
19 excessive fines as provided in the Eighth Amendment of the United States Constitution and  
20 Article I, Section 17 of the Constitution of the State of California, and violates Union  
21 Carbide's right to substantive due process as provided in the Fifth and Fourteenth  
22 Amendments of the United States and California Constitutions, and thus fails to state a  
23 cause of action supporting an award of punitive or exemplary damages.

24 FIFTY-SIXTH AFFIRMATIVE DEFENSE

25 Punitive Damages Prohibited

26 The causes of action asserted herein by plaintiff fail to state facts sufficient to  
27 constitute a cause of action in that plaintiff has asserted claims for punitive damages which,  
28

1 if granted, would violate the prohibition against laws impairing the obligation of contracts  
2 set forth in Article I, Section 10, of the United States Constitution.

3 FIFTY-SEVENTH AFFIRMATIVE DEFENSE

4 Punitive Damages Prohibited

5 Plaintiff's claim for punitive or exemplary damages, if any, alleged by Plaintiff is  
6 barred by the "double jeopardy" clause of the Fifth Amendment to the United States  
7 Constitution, as applied to the States through the Fourteenth Amendment.

8 FIFTY-EIGHTH AFFIRMATIVE DEFENSE

9 Negligent Hiring Claim Invalid

10 An employee of an independent contractor may not pursue a claim for negligent  
11 hiring against a hirer of the independent contractor. *See Camargo v. Tjaarda Dairy*, 25 Cal.  
12 4th 1235 (2001).

13 FIFTY-NINTH AFFIRMATIVE DEFENSE

14 Right to Amend

15 This defendant will assert any and all additional defenses that arise during the  
16 course of this litigation and reserves the right to amend its answer to assert such defenses.

17 SIXTIETH AFFIRMATIVE DEFENSE

18 Alternate Unknown Cause

19 The alleged injuries and damages, if any, may be in whole or in part due to injury,  
20 disease or cause other than as alleged.

21 SIXTY-FIRST AFFIRMATIVE DEFENSE

22 No Concert of Action

23 There is no concert of action between defendant and any of the other named  
24 defendants. Defendants are not joint tortfeasors and accordingly, defendant may not be  
25 held jointly and severally liable with the other named defendants.

26 PRAYER

27 WHEREFORE, this answering defendant prays for judgment as follows:  
28

- 1           1.     That Plaintiff take nothing by reason of their Complaint or any claims stated
- 2 therein;
- 3           2.     That Plaintiff's Complaint and each cause of action contained therein be
- 4 dismissed with prejudice against Union Carbide;
- 5           3.     For costs of suit; and
- 6           4.     For such other and further relief as the Court deems just and appropriate in
- 7 the circumstances.

8  
9 Dated: February 11, 2008

BRYDON HUGO & PARKER

10  
11 By: \_\_\_\_\_

John R. Brydon  
Brian H. Buddell  
Josette D. Johnson  
Attorneys for Defendant  
UNION CARBIDE CORPORATION

Jorgensen, Thomas & Patricia  
San Francisco County Superior Court Case No. CGC-08-274494  
LexisNexis Transaction No. 18557950

**PROOF OF SERVICE**

I am a resident of the State of California, over the age of 18 years, and not a party to the within action. My electronic notification address is service@bhplaw.com and my business address is 135 Main Street, 20<sup>th</sup> Floor, San Francisco, California 94105. On the date below, I served the following:


**ANSWER OF UNION CARBIDE CORPORATION TO COMPLAINT FOR PERSONAL  
INJURY – ASBESTOS**

on the following:

LEVIN SIMES KAISER & GORNICK  
44 Montgomery Street, 36th Floor  
San Francisco, CA 94104  
Fax: (415) 981-1270

- X By transmitting electronically the document(s) listed above as set forth on the electronic service list on this date before 5:00 p.m.
- o By placing the document(s) listed above in a sealed envelope and placing the envelope for collection and mailing on the date below following the firm's ordinary business practices. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal service on the same day with postage thereon fully prepaid at San Francisco, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- o By placing the document(s) listed above in a sealed envelope designated for Federal Express overnight delivery and depositing same with fees thereupon prepaid, in a facility regularly maintained by Federal Express, addressed as set forth above.

I declare under penalty of perjury that the above is true and correct.  
Executed on February 11, 2008, at San Francisco, California.

  
SABRINA STEWART

# **EXHIBIT 3**

1 John R. Brydon [Bar No. 083365]  
Brian H. Buddell [Bar No. 166103]  
2 Josette D. Johnson [Bar No. 195977]  
BRYDON HUGO & PARKER  
3 135 Main Street, 20th Floor  
San Francisco, CA 94105  
4 Telephone: (415) 808-0300  
Facsimile: (415) 808-0333  
5  
6 Attorneys for Defendant  
UNION CARBIDE CORPORATION

7  
8 SUPERIOR COURT – STATE OF CALIFORNIA  
9 COUNTY OF SAN FRANCISCO – UNLIMITED JURISDICTION

10 THOMAS JORGENSEN and PATRICIA  
JORGENSEN,

11 Plaintiff(s),

12 vs.

13 A.W. CHESTERTON COMPANY, et al.,

14 Defendants.

(ASBESTOS)  
Case No. CGC-08-274494

DEMAND FOR STATEMENT OF  
DAMAGES

15 TO PLAINTIFF AND HIS ATTORNEYS OF RECORD HEREIN:

16 Pursuant to §425.11 of the California Code of Civil Procedure, defendant UNION  
17 CARBIDE CORPORATION hereby demands that plaintiff serve within 15 days a statement  
18 of the nature and extent of the special and general damages, item by item, which they seek  
19 by filing this action.

20 Service of such response shall be made to the undersigned at 135 Main Street, 20<sup>TH</sup>  
21 Floor, San Francisco, CA 94105.

22  
23 Dated: February 11, 2008

BRYDON HUGO & PARKER

24  
25 By: 

26 John R. Brydon  
Brian H. Buddell  
27 Josette D. Johnson  
Attorneys for Defendant  
28 UNION CARBIDE CORPORATION

Jorgensen, Thomas & Patricia  
San Francisco County Superior Court Case No. CGC-08-274494  
LexisNexis Transaction No. 18557950

**PROOF OF SERVICE**

I am a resident of the State of California, over the age of 18 years, and not a party to the within action. My electronic notification address is service@bhplaw.com and my business address is 135 Main Street, 20<sup>th</sup> Floor, San Francisco, California 94105. On the date below, I served the following:

**DEMAND FOR STATEMENT OF DAMAGES**

on the following:

LEVIN SIMES KAISER & GORNICK  
44 Montgomery Street, 36th Floor  
San Francisco, CA 94104  
Fax: (415) 981-1270

- X By transmitting electronically the document(s) listed above as set forth on the electronic service list on this date before 5:00 p.m.
- By placing the document(s) listed above in a sealed envelope and placing the envelope for collection and mailing on the date below following the firm's ordinary business practices. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal service on the same day with postage thereon fully prepaid at San Francisco, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- By placing the document(s) listed above in a sealed envelope designated for Federal Express overnight delivery and depositing same with fees thereupon prepaid, in a facility regularly maintained by Federal Express, addressed as set forth above.

I declare under penalty of perjury that the above is true and correct.  
Executed on February 11, 2008, at San Francisco, California.

  
SABRINA STEWART

# **EXHIBIT 4**



Attorneys for Defendant  
QUINTEC INDUSTRIES, INC.

THOMAS JORGENSEN and PATRICIA JORGENSEN,

Plaintiffs,

**VS.**

A. W. CHESTERTON COMPANY, et al.,

Defendant QUINTEC INDUSTRIES, INC. (hereafter "Defendant"), in answering the Plaintiffs' unverified complaint for itself alone, and severing itself from all others, admits, denies and alleges as follows:

DEFENDANT HEREIN ALLEGES AND SETS FORTH SEPARATELY AND  
DISTINCTLY THE FOLLOWING AFFIRMATIVE DEFENSES TO EACH AND EVERY

1 CAUSE OF ACTION ALLEGED IN PLAINTIFFS' COMPLAINT AS THOUGH EACH  
2 DEFENSE WERE PLEADED SEPARATELY TO EACH SUCH CAUSE OF ACTION:

3 **FIRST AFFIRMATIVE DEFENSE**

4 2. The complaint and each and every purported cause of action or count thereof fails to  
5 state facts sufficient to constitute a cause or causes of action against Defendant.

6 **SECOND AFFIRMATIVE DEFENSE**

7 3. Defendant is informed and believes and thereon alleges that the acts, injuries and  
8 damages alleged in the complaint occurred and were proximately caused by either the sole  
9 negligence or fault of Plaintiffs, which sole negligence or fault bars Plaintiffs' recovery, or was  
10 contributed to by Plaintiffs' negligence or fault. Plaintiffs' recovery, if any, should be reduced by  
11 an amount proportionate to the amount by which Plaintiffs' negligence or fault contributed to the  
12 happening of the alleged incident and/or alleged injury.

13 **THIRD AFFIRMATIVE DEFENSE**

14 4. Defendant is informed and believes and thereon alleges that the negligence,  
15 carelessness and other acts or omissions of other Defendants in this lawsuit, as well as other  
16 persons and entities not parties to this lawsuit, proximately caused or contributed to Plaintiffs'  
17 injuries and damages, if any. The negligence, carelessness and other acts or omissions of the other  
18 Defendants in this lawsuit and other persons and entities not parties to this lawsuit account for one  
19 hundred percent (100%) of the causal or contributing factors relating to Plaintiffs' injuries and  
20 damages, if any, and/or constitute superseding and/or intervening causes of Plaintiffs' injuries and  
21 damages, if any.

22 **FOURTH AFFIRMATIVE DEFENSE**

23 5. Defendant is informed and believes and thereon alleges that the accident, injury and  
24 damages alleged in Plaintiffs' complaint occurred and were proximately caused by either the sole  
25 negligence of Plaintiff's employers other than Defendant, or co-employees, which sole negligence  
26 bars Plaintiffs' recovery, or were contributed to by the negligence of Plaintiff's employers other  
27 than Defendant, or co-employees. Plaintiffs' recovery, if any, must be reduced by an amount  
28 proportionate to the amount by which the negligence of Plaintiff's employers other than Defendant,

1 and/or the negligence of Plaintiff's co-employees contributed to the happening of the alleged  
2 accident and the alleged injuries.

3 **FIFTH AFFIRMATIVE DEFENSE**

4 6. While at all times denying any liability whatsoever to Plaintiffs, any alleged liability  
5 or responsibility of Defendant is small in proportion to the alleged liability and responsibility of  
6 other persons or entities, including other persons and entities who are parties herein, and Plaintiffs  
7 should be limited to seeking recovery from Defendant for the proportion in which Defendant is  
8 allegedly liable or responsible, all such alleged liability and responsibility being expressly denied.

9 **SIXTH AFFIRMATIVE DEFENSE**

10 7. Defendant is informed and believes and thereon alleges that at the time the alleged  
11 operations, acts and conduct occurred, Plaintiff was acting within the course and scope of  
12 employment, and was entitled to receive, did receive, and will continue to receive workers'  
13 compensation benefits. Plaintiff's employers other than Defendant failed to provide the Plaintiff  
14 with a safe place in which to work, and said employers' negligence, carelessness and other acts and  
15 omissions proximately caused the injuries and damages claimed. Therefore, said employers and  
16 their workers' compensation carriers are barred from any recovery by lien or otherwise herein, and  
17 Defendant is entitled to set off any such benefits Plaintiffs have received against any judgment  
18 rendered in favor of Plaintiffs.

19 **SEVENTH AFFIRMATIVE DEFENSE**

20 8. Defendant is informed and believes and thereon alleges that Plaintiff knew of the  
21 risk and dangers inherent to his conduct, and with full knowledge of those risks and dangers and  
22 with an appreciation for the magnitude of the risks and dangers, did voluntarily assume the risk and  
23 injuries and damages, if any, sustained thereby. Plaintiff's assumption of risk bars or  
24 proportionately reduces any recovery by Plaintiffs.

25 **EIGHTH AFFIRMATIVE DEFENSE**

26 9. Defendant alleges that Plaintiffs have failed to make reasonable efforts to mitigate  
27 their injuries and/or damages, if any.

28 ///

**NINTH AFFIRMATIVE DEFENSE**

10. The complaint and each and every cause of action are barred by the applicable statute of limitations including, but not limited to, Code of Civil Procedure Sections 335.1, 338, 339, 340.2 and 343.

**TENTH AFFIRMATIVE DEFENSE**

11. Plaintiffs' action is barred by the provisions of Labor Code Section 3600, et seq.

**ELEVENTH AFFIRMATIVE DEFENSE**

12. Plaintiffs have waived and are estopped from asserting any claim against Defendant by reason of Plaintiffs' approval and consent to the risk of the matters causing the damages, if any, and their acknowledgment of, acquiescence in and consent to the alleged acts or omissions, if any, of Defendant.

**TWELFTH AFFIRMATIVE DEFENSE**

13. This action is barred by laches as Plaintiffs unreasonably delayed in the bringing of this action and thereby prejudiced the rights of Defendant.

**THIRTEENTH AFFIRMATIVE DEFENSE**

14. Defendant alleges that Defendant distributed and/or marketed product(s) in full compliance with regulations and/or specifications promulgated by the United States Government and any recovery by Plaintiffs is barred as a consequence.

**FOURTEENTH AFFIRMATIVE DEFENSE**

15. Plaintiffs are barred from asserting any claim based on breach of warranty against Defendant by reason of failure to fulfill the conditions of warranties alleged in the complaint in the event such alleged warranties are proved at trial.

**FIFTEENTH AFFIRMATIVE DEFENSE**

16. Defendant alleges that Plaintiffs have waived whatever rights they might otherwise have had for breach of warranty in that Plaintiffs failed to notify Defendant of any alleged breach of warranty, express or implied, and/or of alleged defects in any products distributed or marketed by Defendant within a reasonable time after Plaintiffs discovered and/or should have discovered any defect or nonconformity, if any existed, thereby prejudicing Defendant from being able to fully

1 investigate and defend the allegations contained in Plaintiffs' complaint.

2 **SIXTEENTH AFFIRMATIVE DEFENSE**

3 17. Defendant alleges that Plaintiffs are now estopped from claiming that any products  
4 distributed or marketed by Defendant were in any way defective or failed to conform to any alleged  
5 warranties in that Plaintiffs failed to notify Defendant of any defect or any nonconformity in the  
6 products within a reasonable time after Plaintiffs discovered, or should have discovered, any defect  
7 or nonconformity, if any existed.

8 **SEVENTEENTH AFFIRMATIVE DEFENSE**

9 18. Defendant alleges that Plaintiffs were not in privity of contract with Defendant, and  
10 that such lack of privity bars recovery herein upon any theory of warranty.

11 **EIGHTEENTH AFFIRMATIVE DEFENSE**

12 19. Defendant is informed and believes and thereon alleges that any injuries or damages  
13 suffered by Plaintiffs, the existence thereof being expressly denied, are the direct and proximate  
14 result of Plaintiff's particular, idiosyncratic, peculiar or unforeseeable susceptibility to the alleged  
15 product(s) distributed or marketed by Defendant, which reaction was not the result of any conduct  
16 or omission of Defendant, nor the result of any defect in any product(s) distributed or marketed by  
17 Defendant.

18 **NINETEENTH AFFIRMATIVE DEFENSE**

19 20. Defendant is informed and believes and thereon alleges that if Plaintiff was injured  
20 by any product distributed or marketed by Defendant, Defendant, irrespective, did not breach any  
21 duty to Plaintiffs and is not liable for those injuries or for Plaintiffs' claimed damages as the  
22 product(s) when distributed and/or marketed conformed to the then current state-of-the-art  
23 specifications, and because the then current state-of-the-art medical, scientific and industrial  
24 knowledge, art and practice were such that Defendant did not and could not know that the  
25 product(s) might pose a risk of harm in normal and foreseeable use.

26 **TWENTIETH AFFIRMATIVE DEFENSE**

27 21. Defendant alleges that Plaintiffs did not reasonably rely on any act, omission or  
28 representation of Defendant.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

22. In the event Plaintiffs are entitled to non-economic damages including, but not limited to, pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, and/or injury to reputation and humiliation, Defendant shall be liable only for the amount of non-economic damages allocated to Defendant's percentage of fault, and a separate judgment shall be rendered against Defendant for that amount pursuant to Civil Code §1431.2.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

23. Defendant denies any and all liability to the extent that Plaintiffs may assert Defendant's alleged liability as a successor, successor in business, successor in product line or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, alter ego, subsidiary, wholly or partially owned by, or the whole or partial owner or member in an entity in which there has been research, study, manufacturing, fabricating, designing, labeling, assembling, distributing, leasing, buying, offering for sale, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, re-branding, manufacturing for others, packaging and advertising of a certain substance, the generic name of which is asbestos.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

24. Defendant alleges that plaintiffs herein lack legal capacity and standing to sue; are not real parties in interest or persons with superior right to make the claims contained in this complaint and are thereby precluded from any recovery whatsoever. Additionally, to the extent they lack standing or proper appointment to bring the claims they are asserting, any action taken in this matter with regard to their claim(s) is voidable. Defendant further contends that any declaration filed by any person asserting a survival claim contains expert opinions and conclusions that are not supported and that the declarant is not qualified to make.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

25. Defendant alleges that Plaintiffs' complaint and each and every cause of action fail to state facts sufficient to constitute a cause or causes of action for punitive damages against

1 Defendant.

2 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

3 26. Defendant is informed and believes and thereon alleges that Plaintiffs and/or other  
4 persons, without Defendant's knowledge and/or approval, redesigned, modified, altered, and used  
5 products distributed or marketed by Defendant contrary to instructions, warnings, and the customs  
6 and practice of the industry so as to substantially change the character of these products. Defendant  
7 further alleges that if the products distributed or marketed by Defendant were defective in any way,  
8 which defectiveness is specifically denied, such defectiveness resulted solely from the redesign,  
9 modification, alteration, use, or other changes therein and not from any act or omission of  
10 Defendant. Therefore, the defect, if any, so created by Plaintiffs and/or other persons or parties, as  
11 the case may be, was the sole and proximate cause of the injuries and/or damages, if any, allegedly  
12 sustained by Plaintiffs.

13 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

14 27. Defendant is informed and believes and thereon alleges that the accident, injury, and  
15 damages alleged in Plaintiffs' complaint were solely and proximately caused by Plaintiffs' misuse  
16 of the product(s). Defendant could not have reasonably foreseen this misuse, and Plaintiffs'  
17 misuse, therefore, bars recovery against Defendant.

18 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

19 28. Defendant is informed and believes and thereon alleges that if Plaintiffs were  
20 injured by any product(s) distributed or marketed by Defendant, such product(s) were intended and  
21 sold in bulk to a knowledgeable and sophisticated user over whom Defendant had no control and  
22 who was fully informed as to risks and dangers, if any, associated with those products and the  
23 precautions, if any, required to avoid those risks and dangers, if any.

24 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

25 29. Defendant is informed and believes and thereon alleges that if Plaintiffs were  
26 injured by any product(s) distributed or marketed by Defendant, that said product(s) were  
27 accompanied by good and sufficient labeling when they left the custody, possession, and control of  
28 Defendant which gave conspectus, reasonable, and adequate warnings and directions to the users of

1 such product(s) concerning the purpose for which, and manner in which, such product(s) were to be  
2 used and concerning the risks and dangers, if any, attendant to said use. Defendant alleges that as a  
3 result of said warnings and directions, Defendant fulfilled whatever duty, if any, that is owed to  
4 Plaintiffs. If Plaintiffs were injured by any such product, the injuries were proximately caused by  
5 the use of the product(s) in disregard of the warnings and directions which was not reasonably  
6 foreseeable to Defendant.

7 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

8 30. Defendant alleges that insofar as the instant complaint is an attempt to recover  
9 punitive or exemplary damages from Defendant, it violates the following United States  
10 Constitutional and California State Constitutional principles:

11 a. Excessive fines clause of the United States Constitution, Eighth Amendment  
12 and Fourteenth Amendment;

13 b. The contract clause, Article I, Section 10, clause 1, and the Fourteenth  
14 Amendment of the United States Constitution;

15 c. The due process clause of the United States Constitution, Fourteenth  
16 Amendment;

17 d. The equal protection clause of the United States Constitution;

18 e. The California Constitution due process and equal protection clauses, Article  
19 1, Section 7(a);

20 f. The California Constitution excessive fines clause, Article 1,  
21 Section 17.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///



1 WHEREFORE, Defendant QUINTEC INDUSTRIES, INC. prays for judgment as follows:

2 1. That Plaintiffs take nothing from Defendant by virtue of the complaint herein;

3 2. That Defendant be awarded costs of suit and attorneys' fees herein; and

4 3. That Defendant be granted such other and further relief as the Court may deem just  
5 and proper.

6 Dated: February 8, 2008

Respectfully submitted,

7 WALSWORTH, FRANKLIN, BEVINS & McCALL, LLP

8  
9 By: /S/ MICHAEL T. MCCALL  
10 MICHAEL T. MCCALL  
11 Attorneys for Defendant  
12 QUINTEC INDUSTRIES, INC.  
13  
14  
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16  
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28

**PROOF OF SERVICE**

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 1 City Boulevard West, Fifth Floor, Orange, California 92868-3677.

On February 8, 2008, I served the within document(s) described as:

ANSWER OF DEFENDANT QUINTEC INDUSTRIES, INC. TO PLAINTIFFS' COMPLAINT FOR DAMAGES

on the interested parties in this action as stated below:

LEVIN SIMES KAISER & GORNICK LLP  
44 Montgomery Street  
36th Floor  
San Francisco, CA 94104

☒ (BY ELECTRONIC MAIL) I provided the document(s) listed above electronically to the Lexis Nexis website pursuant to their instructions on that website. If the document is provided to Lexis Nexis electronically by 5:00 p.m., then the document will be deemed served on the date that it was provided to Lexis Nexis.

Executed on February 8, 2008, at Orange, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Laura El-Ali  
(Type or print name)

/S/ LAURA EL-ALI  
(Signature)

# **EXHIBIT 5**

1 MICHAEL T. MCCALL, State Bar No. 109580  
WALSWORTH, FRANKLIN, BEVINS & McCALL, LLP  
2 601 Montgomery Street, Ninth Floor  
San Francisco, California 94111-2612  
3 Telephone: (415) 781-7072  
Facsimile: (415) 391-6258

4 Attorneys for Defendant  
5 HAMILTON MATERIALS, INC.

6  
7  
8 **SUPERIOR COURT OF CALIFORNIA**  
9 **COUNTY OF SAN FRANCISCO (UNLIMITED JURISDICTION)**  
10

11 THOMAS JORGENSEN and PATRICIA  
JORGENSEN,

12 Plaintiffs,

13 vs.

14 A. W. CHESTERTON COMPANY, et al.,

15 Defendants.  
16

) Case No. CGC-08-274494  
)

) **ANSWER OF DEFENDANT**  
) **HAMILTON MATERIALS, INC. TO**  
) **PLAINTIFFS' COMPLAINT FOR**  
) **DAMAGES**  
)

) (ASBESTOS)  
)  
)

17 Defendant HAMILTON MATERIALS, INC. (hereafter "Defendant"), in answering the  
18 Plaintiffs' unverified Complaint, for itself alone, and severing itself from all others, admits, denies  
19 and alleges as follows:

20 1. Pursuant to California Code of Civil Procedure, Section 431.30, Defendant denies,  
21 both generally and specifically, each, every, and all allegations of each and every purported cause  
22 of action or count of Plaintiffs' complaint, denying specifically that Plaintiffs have been, are, or will  
23 be injured or damaged in the manner or sum alleged, or in any other manner or sums at all, and  
24 further denying that Defendant was negligent in any manner, that the alleged product was defective  
25 in any way, or that the alleged defect was the proximate cause of the Plaintiffs' claimed damages or  
26 injuries.

27 DEFENDANT HEREIN ALLEGES AND SETS FORTH SEPARATELY AND  
28 DISTINCTLY THE FOLLOWING AFFIRMATIVE DEFENSES TO EACH AND EVERY

-1-

HAMILTON MATERIALS, INC.'S ANSWER TO PLAINTIFFS' COMPLAINT

1 CAUSE OF ACTION ALLEGED IN PLAINTIFFS' COMPLAINT AS THOUGH PLEADED  
2 SEPARATELY TO EACH AND EVERY CAUSE OF ACTION:

3 **FIRST AFFIRMATIVE DEFENSE**

4 2. The complaint and each and every purported cause of action or count thereof fails to  
5 state facts sufficient to constitute a cause or causes of action against Defendant.

6 **SECOND AFFIRMATIVE DEFENSE**

7 3. Defendant is informed and believes and thereon alleges that the acts, injuries and/or  
8 damages alleged in Plaintiffs' complaint occurred and were proximately caused by either the sole  
9 negligence or fault of Plaintiffs, which sole negligence or fault bars Plaintiffs' recovery, or were  
10 contributed to by Plaintiffs' negligence or fault. Plaintiffs' recovery, if any, should be reduced by  
11 an amount proportionate to the amount by which Plaintiffs' negligence or fault contributed to the  
12 happening of the alleged incident and/or alleged injury.

13 **THIRD AFFIRMATIVE DEFENSE**

14 4. Defendant is informed and believes and thereon alleges that the negligence,  
15 carelessness and other acts or omissions of other Defendants in this lawsuit, as well as other  
16 persons and entities not parties to this lawsuit, proximately caused or contributed to Plaintiffs'  
17 injuries and damages, if any. The negligence, carelessness and other acts or omissions of the other  
18 Defendants in this lawsuit and other persons and entities not parties to this lawsuit account for one  
19 hundred percent (100%) of the causal or contributing factors relating to Plaintiffs' injuries and  
20 damages, if any, and/or constitute the supervening and/or intervening causes of the injuries and  
21 damages, if any, alleged by Plaintiffs.

22 **FOURTH AFFIRMATIVE DEFENSE**

23 5. Defendant is informed and believes and thereon alleges that the accident, injury and  
24 damages alleged by Plaintiffs occurred and were proximately caused by either the sole negligence  
25 of Plaintiff's employers or co employees, which sole negligence bars Plaintiffs' recovery, or were  
26 contributed to by the negligence of Plaintiff's employers or co employees. Plaintiffs' recovery, if  
27 any, must be reduced by an amount proportionate to the amount by which the negligence of  
28 Plaintiff's employers and/or the negligence of Plaintiff's co employees contributed to the happening

1 of the alleged accident and the alleged injuries.

2 **FIFTH AFFIRMATIVE DEFENSE**

3 6. Defendant is informed and believes and thereon alleges that while at all times  
4 denying any liability whatsoever to Plaintiffs, any alleged liability or responsibility of Defendant is  
5 small in proportion to the alleged liability and responsibility of other persons or entities, including  
6 other persons and entities who are parties herein, and Plaintiffs should be limited to seeking  
7 recovery from Defendant for the proportion in which Defendant is allegedly liable or responsible,  
8 all such alleged liability and responsibility being expressly denied.

9 **SIXTH AFFIRMATIVE DEFENSE**

10 7. Defendant is informed and believes and thereon alleges that at the time the alleged  
11 operations, acts and conduct occurred, Plaintiff was acting within the course and scope of  
12 employment and was entitled to receive, did receive and will continue to receive workers'  
13 compensation benefits. Plaintiff's employers failed to provide the Plaintiff with a safe place in  
14 which to work and Plaintiff's employers' negligence, carelessness and other acts and omissions  
15 proximately caused the injuries and damages claimed. Therefore, said employers and their  
16 workers' compensation carriers are barred from any recovery by lien or otherwise herein and  
17 Defendant is entitled to set off any such benefits Plaintiffs have received against any judgment  
18 rendered in favor of Plaintiffs.

19 **SEVENTH AFFIRMATIVE DEFENSE**

20 8. Defendant is informed and believes and thereon alleges that Plaintiff knew of the  
21 risks and dangers inherent to Plaintiff's conduct and with full knowledge of those risks and dangers  
22 and with an appreciation for the magnitude of the risks and dangers, did voluntarily assume the  
23 risks and injuries and damages, if any, sustained thereby. Plaintiff's assumption of risk bars or  
24 proportionately reduces any recovery by Plaintiffs.

25 **EIGHTH AFFIRMATIVE DEFENSE**

26 9. Plaintiffs have failed to make reasonable efforts to mitigate their injuries and/or  
27 damages, if any.

28 ///

**NINTH AFFIRMATIVE DEFENSE**

10. The complaint and each and every cause of action is barred by the applicable Statute of Limitations, including, but not limited to, Code of Civil Procedure, Sections 335.1, 338, 339, 340.2 and 343.

**TENTH AFFIRMATIVE DEFENSE**

11. Plaintiffs' action is barred by the provisions of Labor Code, Section 3600, et seq.

**ELEVENTH AFFIRMATIVE DEFENSE**

12. Defendant alleges that Plaintiffs have waived and are estopped from asserting any claim against Defendant by reason of Plaintiffs' approval and consent to the risk of the matters causing the damages, if any, and their acknowledgement of, acquiescence in and consent to the alleged acts or omissions, if any, of Defendant.

**TWELFTH AFFIRMATIVE DEFENSE**

13. This action is barred by laches as Plaintiffs unreasonably delayed in the bringing of this action and thereby prejudiced the rights of Defendant.

**THIRTEENTH AFFIRMATIVE DEFENSE**

14. Defendant alleges that Defendant manufactured and produced its product(s) in full compliance with governmental regulations and/or specifications.

**FOURTEENTH AFFIRMATIVE DEFENSE**

15. Defendant alleges that Plaintiffs are barred from asserting any claim based on breach of warranty against Defendant by reason of failure to fulfill the conditions of warranties alleged in their complaint in the event such alleged warranties are proved at trial.

**FIFTEENTH AFFIRMATIVE DEFENSE**

16. Defendant alleges that Plaintiffs have waived whatever rights they might otherwise have had for breach of warranty in that Plaintiffs failed to notify Defendant of any alleged breach of warranty, express or implied, and/or of any alleged defects in any product(s) manufactured or marketed by Defendant within a reasonable time after Plaintiffs discovered and/or should have discovered any defect or nonconformity, if any existed, thereby prejudicing Defendant from being able to fully investigate and defend the allegations contained in Plaintiffs' complaint.

1 **SIXTEENTH AFFIRMATIVE DEFENSE**

2 17. Defendant alleges that Plaintiffs are now estopped from claiming that any products  
3 manufactured or marketed by Defendant were in any way defective or failed to conform to any  
4 alleged warranties in that Plaintiffs failed to notify Defendant of any defect or nonconformity in  
5 any product(s) within a reasonable time after Plaintiffs discovered, or should have discovered, any  
6 defect or nonconformity, if any existed.

7 **SEVENTEENTH AFFIRMATIVE DEFENSE**

8 18. Defendant alleges that Plaintiffs were not in privity of contract with Defendant and  
9 that such lack of privity bars Plaintiffs' recovery herein upon any theory of warranty.

10 **EIGHTEENTH AFFIRMATIVE DEFENSE**

11 19. Defendant alleges that Plaintiff and/or other persons, without Defendant's  
12 knowledge and/or approval, redesigned, modified, altered and/or used Defendant's products  
13 contrary to the instructions and warnings and the customs and practices of the industry so as to  
14 substantially change the character of Defendant's product. Defendant further alleges that if the  
15 product(s) of Defendant were defective in any way, which defectiveness is specifically denied, such  
16 defectiveness resulted solely from the redesign, modification, alteration, use or other changes  
17 therein and not from any act or omission of Defendant. Therefore, the defect, if any, so created by  
18 Plaintiff and/or other persons or parties, as the case may be, was the sole and proximate cause of  
19 the injuries and/or damages, if any, alleged by Plaintiffs.

20 **NINETEENTH AFFIRMATIVE DEFENSE**

21 20. Defendant is informed and believes and thereon alleges that the accident, injury  
22 and/or damages alleged in Plaintiffs' complaint were solely and proximately caused by Plaintiff's  
23 misuse of the product(s). Defendant could not have reasonably foreseen this misuse and Plaintiff's  
24 misuse thereof bars recovery against Defendant.

25 **TWENTIETH AFFIRMATIVE DEFENSE**

26 21. Defendant is informed and believes and thereon alleges that any injuries or damages  
27 alleged by Plaintiffs, the existence thereof being expressly denied by Defendant, are the direct and  
28 proximate result of Plaintiff's particular, idiosyncratic, peculiar or unforeseeable susceptibility to



1 the alleged product(s) manufactured by Defendant, which reaction was not the result of any  
2 conduct or omission of Defendant, nor the result of any defect in any product(s) manufactured by  
3 Defendant.

4 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

5 22. Defendant alleges that in light of all relevant factors, on balance with the benefits of  
6 the design of any product(s) alleged to have caused injuries to Plaintiffs, if any, outweigh the risks  
7 and danger, if any, inherent in the design of the product(s).

8 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

9 23. Defendant alleges that if Plaintiffs were injured by any product(s) manufactured or  
10 distributed by Defendant, Defendant, irrespective, did not breach any duty to Plaintiffs and is not  
11 liable for those injuries or for Plaintiffs' claimed damages as the product(s) when manufactured and  
12 distributed conformed to the then current state-of-the-art specifications and because the then  
13 current state-of-the-art medical, scientific and industrial knowledge, art and practice were such that  
14 Defendant did not and could not know that the product(s) might pose a risk of harm in normal and  
15 foreseeable use.

16 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

17 24. Defendant alleges that if Plaintiffs were injured by any product(s) manufactured by  
18 Defendant, such product(s) were intended and sold in bulk to a knowledgeable and sophisticated  
19 distributor or user over whom Defendant had no control and who was fully informed as to the risks  
20 and dangers, if any, associated with the product(s) and the precautions, if any, required to avoid the  
21 risks and dangers, if any.

22 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

23 25. Defendant alleges that if Plaintiffs were injured by any product(s) manufactured by  
24 Defendant, the product(s) were accompanied by good and sufficient labeling when they left the  
25 custody, possession and control of Defendant which gave conspectus, reasonable and adequate  
26 warnings and directions to the users of the product(s) concerning the purpose for which, and  
27 manner in which, the product(s) were to be used and concerning the risks and dangers, if any,  
28 attendant to said use. Defendant alleges that as a result of the warnings and directions, Defendant

1 fulfilled whatever duty, if any, that is owed to Plaintiffs. If Plaintiffs were injured by any such  
2 product, the injuries were proximately caused by the use of the product(s) in disregard of the  
3 warnings and directions, which was not reasonably foreseeable to Defendant.

4 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

5 26. Defendant alleges that Plaintiffs did not reasonably rely upon any act, omission or  
6 representation of Defendant.

7 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

8 27. Defendant denies any and all liability to the extent that Plaintiffs may assert  
9 Defendant's alleged liability as a successor, successor in business, successor in product line or a  
10 portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a  
11 portion thereof, parent, alter ego, subsidiary, wholly or partially owned by, or the whole or partial  
12 owner or member in an entity in which there has been research, study, manufacturing, fabricating,  
13 designing, labeling, assembling, distributing, leasing, buying, offering for sale, selling, inspecting,  
14 servicing, installing, contracting for installation, repairing, marketing, warranting, rebranding,  
15 manufacturing for others, packaging and advertising of a certain substance, the generic name of  
16 which is asbestos.

17 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

18 28. Defendant alleges that plaintiffs herein lack legal capacity and standing to sue; are  
19 not real parties in interest or persons with superior right to make the claims contained in this  
20 complaint and are thereby precluded from any recovery whatsoever. Additionally, to the extent  
21 they lack standing or proper appointment to bring the claims they are asserting, any action taken in  
22 this matter with regard to their claim(s) is voidable. Defendant further contends that any  
23 declaration filed by any person asserting a survival claim contains expert opinions and conclusions  
24 that are not supported and that the declarant is not qualified to make.

25 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

26 29. Defendant alleges that Plaintiffs' complaint and each and every cause of action fail  
27 to state facts sufficient to constitute a cause or causes of action for punitive damages against  
28 Defendant.

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

30. Defendant alleges that insofar as the instant complaint is an attempt to recover punitive or exemplary damages from this Defendant, it violates the following United States Constitutional and California State Constitutional principles:

- a. Excessive fines clause of the United States Constitution, Eighth Amendment and Fourteenth Amendment;
- b. The contract clause, Article I, Section 10, clause 1, and the Fourteenth Amendment of the United States Constitution;
- c. The due process clause of the United States Constitution, Fourteenth Amendment;
- d. The equal protection clause of the United States Constitution;
- e. The California Constitution due process and equal protection clauses, Article 1, Section 7(a);
- f. The California Constitution excessive fines clause, Article 1, Section 17.

WHEREFORE, Defendant HAMILTON MATERIALS, INC. prays for judgment as follows:

1. That Plaintiffs take nothing from Defendant by virtue of the complaint herein;
2. That Defendant be awarded costs of suit and attorneys' fees herein; and
3. That Defendant be granted such other and further relief as the Court may deem just and proper.

Dated: February 7, 2008

Respectfully submitted,

WALSWORTH, FRANKLIN, BEVINS & MCCALL, LLP

By: /S/ MICHAEL T. MCCALL  
MICHAEL T. MCCALL  
Attorneys for Defendant  
HAMILTON MATERIALS, INC.

**PROOF OF SERVICE**

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 1 City Boulevard West, Fifth Floor, Orange, California 92868-3677.

On February 7, 2008, I served the within document(s) described as:

ANSWER OF DEFENDANT HAMILTON MATERIALS, INC. TO PLAINTIFFS' COMPLAINT FOR DAMAGES (ASBESTOS)

on the interested parties in this action as stated below:

LEVIN SIMES KAISER & GORNICK LLP  
44 Montgomery Street  
36th Floor  
San Francisco, CA 94104

☒ (BY ELECTRONIC MAIL) I provided the document(s) listed above electronically to the Lexis Nexis website pursuant to their instructions on that website. If the document is provided to Lexis Nexis electronically by 5:00 p.m., then the document will be deemed served on the date that it was provided to Lexis Nexis.

Executed on February 7, 2008, at Orange, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Laura El-Ali  
(Type or print name)

/S/ LAURA EL-ALI  
(Signature)

# **EXHIBIT 6**

1 RAYMOND L. GILL (SBN 153529)  
BRENDAN J. TUOHY (SBN 233253)  
2 **KIRKPATRICK & LOCKHART**  
**PRESTON GATES ELLIS LLP**  
3 55 Second Street, Suite 1700  
San Francisco, CA 94105  
4 Telephone: (415) 882-8200  
Facsimile: (415) 882-8220

5 Attorneys for Defendant  
6 CRANE CO.

7  
8 **SUPERIOR COURT OF CALIFORNIA**  
9 **COUNTY OF SAN FRANCISCO- UNLIMITED CIVIL JURISDICTION**  
10

11 THOMAS JORGENESEN and PATRICIA  
12 JORGENSEN,

13 Plaintiffs,

14 v.

15 A.W. CHESTERTON COMPANY, et al.,

16 Defendants.

) **ASBESTOS-RELATED CASE**

)  
) CASE NO. CGC-08-274494

) **PROOF OF SERVICE**

)  
) Complaint Filed: January 3, 2008  
)  
)  
)

1 **Thomas Jorgensen and Patricia Jorgensen v. A.W. Chesterton Company et al.**  
2 San Francisco Superior Court Case No.: CGC-08-274494

3  
4 **PROOF OF SERVICE BY ELECTRONIC TRANSMISSION**

5 I am employed in the County of San Francisco, State of California. I am  
6 over the age of 18 and not a party to the within action; my business address is  
7 55 Second Street, Suite 1700, San Francisco, CA 94105.

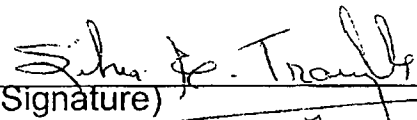
8 On February 7, 2008, I electronically served the document(s) via  
9 LexisNexis File & Serve described as:

- 10  
11  
12 1. ANSWER TO COMPLAINT FOR PERSONAL INJURY – ASBESTOS; and  
13 2. DEFENDANT CRANE CO.'S DEMAND FOR JURY TRIAL

14 on the recipients designated on the Transaction Receipt located on the  
15 LexisNexis File & Serve website.

16 I declare under penalty of perjury under the laws of the State of  
17 California that the above is true and correct. Executed on February 7, 2008, at  
18 San Francisco, California.

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28  
Silvia E. Traugher  
(Type or Print Name)

  
(Signature)

# **EXHIBIT 7**



1 RAYMOND L. GILL (SBN 153529)  
2 BRENDAN J. TUOHY (SBN 233253)  
3 **KIRKPATRICK & LOCKHART**  
4 **PRESTON GATES ELLIS LLP**  
5 55 Second Street, Suite 1700  
6 San Francisco, CA 94105  
7 Telephone: (415) 882-8200  
8 Facsimile: (415) 882-8220

9 Attorneys for Defendant  
10 CRANE CO.

11 **SUPERIOR COURT OF CALIFORNIA**  
12 **COUNTY OF SAN FRANCISCO— UNLIMITED CIVIL JURISDICTION**

13 THOMAS JORGENESEN and PATRICIA  
14 JORGENSEN,

15 Plaintiffs,

16 v.

17 A.W. CHESTERTON COMPANY, et al.,

18 Defendants.

) **ASBESTOS-RELATED CASE**

) **CASE NO. CGC-08-274494**

) **DEFENDANT CRANE CO.'S DEMAND**  
) **FOR JURY TRIAL**

) **Complaint Filed: January 3, 2008**  
)

19 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

20 PLEASE TAKE NOTICE that CRANE CO. hereby demands a jury trial in this action.

21 Dated: February 7, 2008

22 **KIRKPATRICK & LOCKHART PRESTON**  
23 **GATES ELLIS LLP**

24 By: /s/ Brendan J. Tuohy  
25 **BRENDAN J. TUOHY**  
26 **Attorneys for Defendant**  
**CRANE CO.**

# **EXHIBIT 8**

1 RAYMOND L. GILL (SBN 153529)  
2 BRENDAN J. TUOHY (SBN 233253)  
3 **KIRKPATRICK & LOCKHART**  
4 **PRESTON GATES ELLIS LLP**  
5 55 Second Street, Suite 1700  
6 San Francisco, CA 94105  
7 Telephone: (415) 882-8200  
8 Facsimile: (415) 882-8220

9 Attorneys for Defendant  
10 CRANE CO.

11 **SUPERIOR COURT OF CALIFORNIA**  
12 **COUNTY OF SAN FRANCISCO – UNLIMITED CIVIL JURISDICTION**

13 THOMAS JORGENSEN and PATRICIA  
14 JORGENSEN,

15 Plaintiffs,

16 vs.

17 A.W. CHESTERTON COMPANY, et al.,  
18 Defendants.

ASBESTOS-RELATED CASE

CASE NO. CGC-08-274494

**ANSWER TO COMPLAINT FOR  
PERSONAL INJURY - ASBESTOS**

Complaint Filed: January 3, 2008

19 COMES NOW defendant, CRANE CO., and in answer to plaintiffs'<sup>1</sup> complaint on file  
20 herein, and each and every cause of action allegedly set forth therein, answers, alleges and denies  
21 as follows:

22 I.

23 This answering defendant denies each and every, all and singular, generally and  
24 specifically, the allegations contained in the complaint, and each and every cause of action  
25 allegedly set forth therein, as they may apply to this answering defendant.

26 <sup>1</sup> Plaintiffs are referred to herein individually and collectively as "plaintiff."

1 II.

2 Further answering said unverified complaint, and each and every cause of action  
3 allegedly set forth therein, this defendant denies that it was legally responsible in some manner  
4 for the circumstances and happenings, as alleged therein, or at all, and denies that plaintiff has  
5 been damaged in the manner set forth in said unverified complaint and each and every cause of  
6 action allegedly set forth therein.

7 III.

8 Further answering said unverified complaint, and each and every cause of action  
9 allegedly set forth therein, this defendant denies that it was negligent and/or careless in any  
10 respect whatsoever, as alleged therein, or at all, and denies that plaintiff has been damaged in the  
11 manner set forth in said unverified complaint and each and every cause of action allegedly set  
12 forth therein.

13 FIRST AFFIRMATIVE DEFENSE

14 AS AND FOR A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO SAID  
15 COMPLAINT, this answering defendant alleges that the complaint and causes of action therein  
16 fail to state facts sufficient to constitute a cause of action against this answering defendant.

17 SECOND AFFIRMATIVE DEFENSE

18 AS AND FOR A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO SAID  
19 COMPLAINT, this answering defendant alleges that the plaintiff was himself careless and  
20 negligent in and about the matters referred to in the complaint and that such negligence and  
21 carelessness on the part of the plaintiff proximately caused and contributed to the damages  
22 complained of, if any there were.

23 THIRD AFFIRMATIVE DEFENSE

24 AS AND FOR A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO SAID  
25 COMPLAINT, this answering defendant alleges that the plaintiff knew, or in the exercise of  
26 ordinary care, should have known of the risks and hazards involved in the undertaking in which

1 plaintiff engaged, but nevertheless and with full knowledge of these things, did fully and  
2 voluntarily consent to assume the risks and hazards involved in the undertaking.

3 FOURTH AFFIRMATIVE DEFENSE

4 AS AND FOR A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE TO SAID  
5 COMPLAINT, this answering defendant alleges that the plaintiff was himself solely and totally  
6 negligent in and about the matters referred to in the complaint and that such negligence and  
7 carelessness on the part of the plaintiff proximately amounted to One Hundred Percent (100%) of  
8 the negligence involved in this case and was the sole cause of the injuries and damages  
9 complained of, if any there were.

10 FIFTH AFFIRMATIVE DEFENSE

11 AS AND FOR A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO SAID  
12 COMPLAINT, this answering defendant alleges that at all times and places mentioned in the  
13 complaint, plaintiff and/or other persons without this defendant's knowledge and approval  
14 redesigned, modified, altered, and used this defendant's products contrary to instructions and  
15 contrary to the custom and practice of the industry. This redesign, modification, alteration, and  
16 use so substantially changed the product's character that if there was a defect in the product --  
17 which is specifically denied -- such defect resulted solely from the redesign, modification,  
18 alteration, or other such treatment or change and not from any act or omission by this defendant.  
19 Therefore, said defect, if any, was created by plaintiff and/or other persons, as the case may be,  
20 and was the direct and proximate cause of the injuries and damages, if any, that plaintiff  
21 allegedly suffered.

22 SIXTH AFFIRMATIVE DEFENSE

23 AS AND FOR A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE TO SAID  
24 COMPLAINT, this answering defendant alleges that if there is any negligence or liability of any  
25 of the parties named herein, it is the sole and exclusive negligence and liability of the other  
26 defendants, and not of this answering defendant.

1  
2 SEVENTH AFFIRMATIVE DEFENSE

3 AS AND FOR A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO SAID  
4 COMPLAINT, this answering defendant is not liable for any injuries alleged in the complaint  
5 because defendant's conduct falls within the purview and protection of the government  
6 contractor defense.

7 EIGHTH AFFIRMATIVE DEFENSE

8 AS AND FOR AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE TO SAID  
9 COMPLAINT, this answering defendant alleges that at the time of the injuries alleged in the  
10 complaint plaintiff was employed and was entitled to and did receive workers' compensation  
11 benefits from said employer. This defendant is informed and believes, and on the basis of said  
12 information and belief alleges that, if the conditions as alleged in the plaintiff's complaint are  
13 found to exist, the plaintiff's employer was negligent and careless in and about the matters  
14 referred to in said complaint and that said negligence on the part of the employer proximately  
15 caused or contributed to the injuries and damages, if any, complained of by the plaintiff, and  
16 further, that the plaintiff's employer assumed the risk of injury to the plaintiff, if any there was,  
17 in that at the time and place of the incident such conditions, if any, were open and apparent and  
18 were fully known to the plaintiff's employer; and that by reason thereof, this defendant is entitled  
19 to set off any compensation benefits received or to be received by the plaintiff against any  
20 judgment which maybe rendered in favor of the plaintiff herein.

21 NINTH AFFIRMATIVE DEFENSE

22 AS AND FOR A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE TO SAID  
23 COMPLAINT, this answering defendant alleges that the complaint and the causes of action  
24 therein are barred by the statutes of limitation and repose of California and any other relevant  
25 state, including but not limited to the limitations set forth under sections 340.2 and 361 of the  
26 Code of Civil Procedure of the State of California.

1 TENTH AFFIRMATIVE DEFENSE

2 AS AND FOR A TENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO SAID  
3 COMPLAINT, this answering defendant alleges that the plaintiff unreasonably delayed in  
4 bringing this action against defendant and that such delay substantially prejudiced this answering  
5 defendant. Therefore, this action is barred by the doctrine of laches.

6 ELEVENTH AFFIRMATIVE DEFENSE

7 AS AND FOR AN ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO  
8 SAID COMPLAINT, this answering defendant alleges that the complaint and the causes of  
9 action therein fail to state facts sufficient to constitute a cause of action against this answering  
10 defendant pursuant to sections 3600, et seq., of the California Labor Code.

11 TWELFTH AFFIRMATIVE DEFENSE

12 AS AND FOR A TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO SAID  
13 COMPLAINT, this answering defendant alleges that plaintiff's employer was contributorily  
14 negligent and careless in and about the matters alleged in the complaint, and that such negligence  
15 and carelessness was a proximate cause of any injuries and damages suffered by plaintiff, if any  
16 there were.

17 THIRTEENTH AFFIRMATIVE DEFENSE

18 AS AND FOR A THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO  
19 SAID COMPLAINT, this answering defendant alleges that plaintiff's employer voluntarily and  
20 knowingly entered into and engaged in the operations, acts and conduct alleged in said  
21 complaint, and voluntarily and knowingly assumed all of the risks incident to said operation, acts  
22 and conduct alleged in said complaint, and voluntarily and knowingly assumed all of the risks  
23 incident to said operations, acts and conduct at the time and place mentioned in the complaint.

24 FOURTEENTH AFFIRMATIVE DEFENSE

25 AS AND FOR A FOURTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO  
26 SAID COMPLAINT, this answering defendant alleges that the plaintiff acknowledged, ratified,

1 consented to and acquiesced in the alleged acts or omissions, if any, of this answering defendant,  
2 thus barring plaintiff from any relief as prayed for herein.

3 FIFTEENTH AFFIRMATIVE DEFENSE

4 AS AND FOR A FIFTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO  
5 SAID COMPLAINT, this answering defendant is informed and believes and therefore alleges  
6 that plaintiff is unable to identify the actual manufacturer or manufacturers of the asbestos  
7 products which allegedly caused the injury which forms the basis of the complaint herein, and  
8 that said manufacturers were entities other than this defendant. Therefore, this defendant may  
9 not be held liable for the injury of the plaintiff.

10 SIXTEENTH AFFIRMATIVE DEFENSE

11 AS AND FOR A SIXTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO  
12 SAID COMPLAINT, this answering defendant alleges that plaintiff's employer was and is a  
13 sophisticated user and knew independently or should have known of any danger or hazard  
14 associated with the use of a product containing asbestos and of exposure to high levels of dust of  
15 any sort.

16 SEVENTEENTH AFFIRMATIVE DEFENSE

17 AS AND FOR A SEVENTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO  
18 SAID COMPLAINT, this answering defendant alleges that at all times alleged in the complaint  
19 the products alleged to have caused plaintiff's injuries were designed, manufactured, sold,  
20 distributed, labeled and advertised in compliance with the then existing state of the art in the  
21 industry to which this defendant belonged and furthermore, that the benefits of any such product  
22 design outweighed any risk of danger in the design and that any such product met the safety  
23 expectations of plaintiff and the general public.

24 EIGHTEENTH AFFIRMATIVE DEFENSE

25 AS AND FOR AN EIGHTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO  
26 SAID COMPLAINT, the plaintiff has released, settled, entered into an accord and satisfaction or



1 otherwise compromised his claims herein, and accordingly, said claims are barred by operation  
2 of law; alternatively, plaintiff has accepted compensation as partial settlement of those claims for  
3 which this defendant is entitled to a set-off.

4 NINETEENTH AFFIRMATIVE DEFENSE

5 AS AND FOR AN NINETEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO  
6 SAID COMPLAINT, there was no negligence, gross negligence, willful, wanton, or malicious  
7 misconduct, reckless indifference or reckless disregard of the rights of the plaintiff, or malice  
8 (actual, legal, or otherwise) on the part of this defendant as to the plaintiff herein.

9 TWENTIETH AFFIRMATIVE DEFENSE

10 AS AND FOR A TWENTIETH, SEPARATE AND AFFIRMATIVE DEFENSE TO  
11 SAID COMPLAINT, at all times and places mentioned in the complaint, plaintiff has failed to  
12 make reasonable efforts to mitigate injuries and damages, if any.

13 TWENTY-FIRST AFFIRMATIVE DEFENSE

14 AS AND FOR A TWENTY-FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO  
15 SAID COMPLAINT, the plaintiff, prior to the filing of this complaint, never informed this  
16 defendant, by notification or otherwise, of any breach of express and/or implied warranties;  
17 consequently, his claims of breach of express and/or implied warranties against this defendant  
18 are barred.

19 TWENTY-SECOND AFFIRMATIVE DEFENSE

20 AS AND FOR A TWENTY-SECOND, SEPARATE AND AFFIRMATIVE DEFENSE  
21 TO SAID COMPLAINT, the injuries to, and damages of plaintiff, if any, were directly caused  
22 by the conduct of various bankrupt entities, including but not limited to JOHNS-MANVILLE  
23 COMPANY, its predecessors and successors in interest, its parent company or companies, its  
24 affiliates, subsidiaries, or related companies and enterprises.

25 TWENTY-THIRD AFFIRMATIVE DEFENSE

26 AS FOR A TWENTY-THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO

1 SAID COMPLAINT, this answering defendant alleges that the plaintiff's claim for punitive  
2 damages impermissibly seeks a multiple award of punitive damages as against this defendant in  
3 violation of the following clauses: the Contracts Clause of Article I, section 10 of the United  
4 States Constitution; the Excessive Fines Clause of the Eighth Amendment of the United States  
5 Constitution; the Due Process Clause of the Fourteenth Amendment of the United States  
6 Constitution and its counterpart under the California Constitution; the Equal Protection of the  
7 laws and Due Process provision of the Fifth and Fourteenth Amendments of the United States  
8 Constitution and Article I, section 7 of the California Constitution; and the Equal Protection of  
9 the laws and defendant's right to be free of Cruel and Unusual Punishment and Excessive Fines  
10 as guaranteed under the Fifth, Eighth and Fourteenth Amendments to the United States  
11 Constitution and Article I, section 7 and 17, Article IV, section 16 of the California Constitution.

12 TWENTY-FOURTH AFFIRMATIVE DEFENSE

13 AS AND FOR A TWENTY-FOURTH, SEPARATE AND DISTINCT ANSWER AND  
14 DEFENSE, this answering defendant alleges that the subject product was not used in the manner  
15 in which it was intended to be used, and as a proximate result of such abuse and misuse, the  
16 plaintiff sustained the injuries and damages complained of, if any there were.

17 TWENTY-FIFTH AFFIRMATIVE DEFENSE

18 AS AND FOR A TWENTY-FIFTH, SEPARATE AND DISTINCT ANSWER AND  
19 DEFENSE, this answering defendant alleges that plaintiff has failed to join a party or the parties  
20 necessary for a just adjudication of this matter and has further omitted to state any reasons for  
21 such failure.

22 TWENTY-SIXTH AFFIRMATIVE DEFENSE

23 AS AND FOR A TWENTY-SIXTH, SEPARATE AND DISTINCT ANSWER AND  
24 DEFENSE, this answering defendant alleges that plaintiff's claims are a nullity for failure of  
25 commencement of suit.  
26

1 TWENTY-SEVENTH AFFIRMATIVE DEFENSE

2 AS AND FOR A TWENTY-SEVENTH, SEPARATE AND DISTINCT ANSWER AND  
3 DEFENSE, this answering defendant alleges that plaintiff failed to exercise ordinary care for his  
4 own safety and well-being, and that failure to exercise ordinary care proximately and directly  
5 caused and/or contributed to the alleged illness and injury pled in the complaint. Consequently,  
6 this defendant is entitled to the full protection afforded by law.

7 TWENTY-EIGHTH AFFIRMATIVE DEFENSE

8 AS AND FOR A TWENTY-EIGHTH, SEPARATE AND DISTINCT ANSWER AND  
9 DEFENSE, this answering defendant alleges that plaintiff's injuries or illness, if any, were due to  
10 the acts or omissions of a person or persons over whom this defendant had neither control nor the  
11 right of control.

12 TWENTY-NINTH AFFIRMATIVE DEFENSE

13 AS AND FOR A TWENTY-NINTH, SEPARATE AND DISTINCT ANSWER AND  
14 DEFENSE, this answering defendant alleges that while specifically and vigorously denying the  
15 allegations of the plaintiff concerning liability, injuries and damages, to the extent that plaintiff  
16 may be able to prove those allegations, this defendant states that they were the result of  
17 intervening acts of superseding negligence on the part of the person or persons over whom this  
18 defendant had neither control nor the right of control.

19 THIRTIETH AFFIRMATIVE DEFENSE

20 AS AND FOR A THIRTIETH, SEPARATE AND DISTINCT ANSWER AND  
21 DEFENSE, this answering defendant alleges that at all times and places mentioned in the  
22 complaint, plaintiff and/or other persons used this answering defendant's products, if indeed any  
23 were used, in an unreasonable manner, not reasonably foreseeable to this defendant, and for a  
24 purpose for which the products were not intended, manufactured or designed. Plaintiff's injuries  
25 and damages, if any, were therefore directly and proximately caused by his misuse and abuse of  
26 such products.

1 THIRTY-FIRST AFFIRMATIVE DEFENSE

2 AS AND FOR A THIRTY-FIRST, SEPARATE AND DISTINCT ANSWER AND  
3 DEFENSE, this answering defendant alleges that any exposure of plaintiff to this defendant's  
4 product or products, which exposure is vigorously denied, was so minimal as to be insufficient to  
5 establish a reasonable degree of probability that the product or products caused his claimed  
6 injuries and illness.

7 THIRTY-SECOND AFFIRMATIVE DEFENSE

8 AS AND FOR A THIRTY-SECOND, SEPARATE AND DISTINCT ANSWER AND  
9 DEFENSE, this answering defendant alleges that at the time of this filing, there was no good  
10 ground to support the complaint as to this defendant. There is now no good ground to support  
11 the complaint as to this defendant.

12 THIRTY-THIRD AFFIRMATIVE DEFENSE

13 AS AND FOR A THIRTY-THIRD, SEPARATE AND DISTINCT ANSWER AND  
14 DEFENSE, this answering defendant alleges that plaintiff has waived any and all claims sought  
15 in this action and is estopped both to assert and to recover upon such claims.

16 THIRTY-FOURTH AFFIRMATIVE DEFENSE

17 AS AND FOR A THIRTY-FOURTH, SEPARATE AND DISTINCT ANSWER AND  
18 DEFENSE, this answering defendant alleges that the doctrine of joint and several liability has  
19 been severely limited in a case such as this, and should plaintiff prevail against this defendant,  
20 this defendant's liability is several and is limited to its own actionable segment of fault, which  
21 fault is vigorously denied.

22 THIRTY-FIFTH AFFIRMATIVE DEFENSE

23 AS AND FOR A THIRTY-FIFTH, SEPARATE AND DISTINCT ANSWER AND  
24 DEFENSE, this answering defendant alleges that the causes of action asserted by plaintiff fail to  
25 state a claim upon which relief can be granted, or, if relief be granted, this defendant's  
26 Constitutional right to substantive and procedural due process of law would be contravened. This

1 answering defendant further alleges that the causes of actions asserted by the plaintiff fail to state  
2 a claim upon which relief can be granted, for if relief be granted, such relief would constitute a  
3 taking of this defendant's property for a public use without just compensation, a violation of this  
4 defendant's Constitutional rights. This answering defendant alleges that the causes of action  
5 asserted by plaintiff fail to state a claim upon which relief can be granted because such relief  
6 would constitute a denial by this court of defendant's Constitutional right to equal protection  
7 under the law.

8 THIRTY-SIXTH AFFIRMATIVE DEFENSE

9 AS AND FOR A THIRTY-SIXTH, SEPARATE AND DISTINCT ANSWER AND  
10 DEFENSE, to the extent that plaintiffs claim that this defendant is responsible, in whole or in  
11 part, for the acts of one or more alternative entities, then this answering defendant denies those  
12 claims.

13 THIRTY-SEVENTH AFFIRMATIVE DEFENSE

14 AS AND FOR A THIRTY-SEVENTH, SEPARATE AND DISTINCT ANSWER AND  
15 DEFENSE, to the extent that plaintiffs claim that this defendant is the successor of another  
16 entity, this answering defendant alleges that plaintiff's claim of successor liability and  
17 association with other entities is not factually or legally supported, and, as such, plaintiff has no  
18 claim against answering defendant as asserted.

19 THIRTY-EIGHTH AFFIRMATIVE DEFENSE

20 AS AND FOR A THIRTY-EIGHTH, SEPARATE AND DISTINCT ANSWER AND  
21 DEFENSE, to the extent that plaintiffs claim that this defendant is responsible for any product  
22 line which as manufactured, distributed, or sold by others, then this answering defendant alleges  
23 that such other entities or person which manufactured, distributed or sold this product line is  
24 legally and solely responsible therefor.

25 THIRTY-NINTH AFFIRMATIVE DEFENSE

26 AS AND FOR A THIRTY-NINTH, SEPARATE AND DISTINCT ANSWER AND

1 DEFENSE, this answering defendant alleges that to the extent any claim for relief in the  
2 complaint, or amended complaint, seeks to recover damages against this defendant for alleged  
3 acts or omissions of predecessors or successors-in-interest to this defendant of any kind or  
4 description, said defendant asserts that it is not legally responsible and cannot legally be held  
5 liable for any such acts or omissions. This defendant further asserts that it cannot be held liable  
6 for punitive damages and/or exemplary damages which are or may be attributable to the conduct  
7 of any predecessor or successor-in-interest. Further, this defendant asserts that the conduct of  
8 any predecessor or successor-in-interest cannot, as a matter of law, provide a legal basis for  
9 liability or the imposition of damages against this defendant.

10 WHEREFORE, having fully answered, this answering defendant prays that plaintiffs'  
11 complaint be dismissed as to it, with prejudice, at plaintiffs' costs.

12  
13 Dated: February 7, 2008

**KIRKPATRICK & LOCKHART  
PRESTON GATES ELLIS LLP**

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16 By: /s/ Brendan J. Tuohy  
BRENDAN J. TUOHY  
Attorneys for Defendant  
17 CRANE CO.  
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CROWLEY MARITIME CORPORATION

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

THOMAS JORGENSEN AND PATRICIA  
JORGENSEN

Plaintiffs,

vs.

A.W. CHESTERTON COMPANY, et al.

Defendants.

Case No.: CV 08 0903 EMC

**EXHIBIT A9 – A17 TO NOTICE OF  
REMOVAL OF ACTION UNDER 28  
U.S.C. §1442(a)(1)  
(FEDERAL OFFICER)**

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# **EXHIBIT 9**



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ALLIS-CHALMERS CORPORATION PRODUCT  
LIABILITY TRUST

SUPERIOR COURT OF CALIFORNIA - COUNTY OF SAN FRANCISCO

THOMAS and PATRICIA JORGENSEN,

No. CGC-08-274494

Plaintiffs,

v.

A. W. CHESTERTON COMPANY, et al.,

**ANSWER OF ALLIS-CHALMERS  
CORPORATION PRODUCT  
LIABILITY TRUST TO COMPLAINT  
FOR PERSONAL INJURY AND LOSS  
OF CONSORTIUM - ASBESTOS**

Defendants.

Now comes ALLIS-CHALMERS CORPORATION PRODUCT LIABILITY TRUST, and files this its answer to the complaint on file in the above-entitled action and answers and denies as follows:

Denies each and every, all and singular, the allegations contained therein and each and every part thereof, and specifically denies that plaintiff has been damaged in any sum whatsoever and/or at all.

AS FOR A FIRST SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT OF PLAINTIFF ON FILE HEREIN AND TO EACH AND EVERY CAUSE OF ACTION THEREOF, this answering defendant alleges that the plaintiff was careless and negligent in and about the matters alleged in the complaint, and that said carelessness and negligence on the part of plaintiff proximately contributed to the happenings of the incident and to the injuries, loss, and damages complained of, if any there were.

AS AND FOR A SECOND, SEPARATE, AND AFFIRMATIVE DEFENSE TO

1 THE COMPLAINT OF PLAINTIFF ON FILE HEREIN AND TO EACH AND EVERY CAUSE  
 2 OF ACTION THEREOF, this answering defendant alleges that plaintiff voluntarily and knowingly  
 3 assumed all of the risks incident to said operations, acts, and conduct at the time and place  
 4 mentioned in said complaint.

5 AS AND FOR A THIRD, SEPARATE, AND AFFIRMATIVE DEFENSE TO THE  
 6 COMPLAINT OF PLAINTIFF ON FILE HEREIN AND TO EACH AND EVERY CAUSE OF  
 7 ACTION THEREOF, this answering defendant alleges that the product in question was properly  
 8 designed and manufactured and was fit for the purpose intended; that said product was improperly  
 9 maintained and used and was abused, resulting in plaintiff's damages, if any there were.

10 AS AND FOR A FOURTH, SEPARATE, AND AFFIRMATIVE DEFENSE TO  
 11 THE COMPLAINT OF PLAINTIFF ON FILE HEREIN AND TO EACH AND EVERY CAUSE  
 12 OF ACTION THEREOF, this answering defendant alleges that said complaint, and each of said  
 13 alleged causes of action thereof, is barred by the provisions of the Code of Civil Procedure, Section  
 14 335.1, Section 340.2, and Section 366.1.

15 AS AND FOR A FIFTH, SEPARATE, AND AFFIRMATIVE DEFENSE TO THE  
 16 COMPLAINT OF PLAINTIFF ON FILE HEREIN AND TO EACH AND EVERY CAUSE OF  
 17 ACTION THEREOF, this answering defendant alleges that the products in question were used  
 18 improperly and this improper use proximately caused the incident and injuries, loss, and damages  
 19 complained of, if any there were.

20 As And For A Sixth, Separate, And Affirmative Defense To The Complaint Of  
 21 Plaintiff On File Herein And To Each And Every Cause Of Action Thereof, this answering  
 22 defendant alleges that plaintiff's complaint does not state facts sufficient to constitute a cause of  
 23 action against this answering defendant.

24 AS AND FOR A SEVENTH, SEPARATE, AND AFFIRMATIVE DEFENSE TO  
 25 THE COMPLAINT OF PLAINTIFF ON FILE HEREIN AND TO EACH AND EVERY CAUSE  
 26 OF ACTION THEREOF, this answering defendant alleges that, while at all times denying any  
 27 liability or obligation whatsoever to the plaintiff herein, its products were manufactured, produced,  
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1 supplied, sold, and distributed in a manner which conformed with specifications promulgated by the  
2 United States Government under its war powers as set forth in the United States Constitution, and  
3 that any recovery by plaintiffs herein is thus barred by said sovereign acts and powers.

4 AS AND FOR AN EIGHTH, SEPARATE, AND AFFIRMATIVE DEFENSE TO  
5 THE COMPLAINT OF PLAINTIFF ON FILE HEREIN AND TO EACH AND EVERY CAUSE  
6 OF ACTION THEREOF, this answering defendant alleges that the asbestos products, if any, for  
7 which it had any legal responsibility were manufactured, packaged, distributed, or sold in  
8 accordance with contract specifications imposed by its co-defendants, by plaintiff's employers, or  
9 by third parties yet to be identified.

10 AS AND FOR A NINTH, SEPARATE, AND AFFIRMATIVE DEFENSE TO THE  
11 COMPLAINT OF PLAINTIFF ON FILE HEREIN AND TO EACH AND EVERY CAUSE OF  
12 ACTION THEREOF, this answering defendant alleges that no conduct by or attributable to it was  
13 the cause in fact or the proximate cause of the damages, if any, suffered by plaintiff, nor a  
14 substantial factor in bringing about said damages.

15 AS AND FOR A TENTH, SEPARATE, AND AFFIRMATIVE DEFENSE TO THE  
16 COMPLAINT OF PLAINTIFF ON FILE HEREIN AND TO EACH AND EVERY CAUSE OF  
17 ACTION THEREOF, this answering defendant alleges that at the time of the injuries alleged in the  
18 complaint, plaintiff was employed and was entitled to receive Workers' Compensation benefits  
19 from plaintiff's employers, that said employers were negligent in and about the matters referred to in  
20 said complaint, and that such negligence on the part of said employers proximately and concurrently  
21 contributed to the happening of the accident and to the loss or damage complained of by plaintiff, if  
22 any there were; and that by reason thereof defendant is entitled to set off any such benefits to be  
23 received by plaintiff against any judgment which may be rendered in favor of plaintiff.

24 AS AND FOR AN ELEVENTH, SEPARATE, AND AFFIRMATIVE DEFENSE  
25 TO THE COMPLAINT OF PLAINTIFF ON FILE HEREIN AND TO EACH AND EVERY  
26 CAUSE OF ACTION THEREOF, this answering defendant alleges that at the time of the injuries  
27 alleged in the complaint, plaintiff's employers were negligent in and about the matters referred to in  
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1 said complaint, and that such negligence on the part of said employers proximately and concurrently  
2 contributed to any loss or damage, including non-economic damages, complained of by plaintiff, if  
3 any there were any, and that defendant is not liable for said employers' proportionate share of non-  
4 economic damages.

5 AS AND FOR A TWELFTH, SEPARATE, AND AFFIRMATIVE DEFENSE TO  
6 THE COMPLAINT OF PLAINTIFF ON FILE HEREIN AND TO EACH AND EVERY CAUSE  
7 OF ACTION THEREOF, this answering defendant alleges that at the time of the injuries alleged in  
8 the complaint, parties other than this defendant were negligent in and about the matters referred to  
9 in said complaint, and that such negligence on the part of said parties proximately and concurrently  
10 contributed to any loss or damage, including non-economic damages, complained of by plaintiff, if  
11 any there were; and that defendant herein shall not be liable for said parties' proportionate share of  
12 non-economic damages.

13 AS AND FOR A THIRTEENTH, SEPARATE, AND AFFIRMATIVE DEFENSE  
14 TO THE COMPLAINT OF PLAINTIFF ON FILE HEREIN AND TO EACH AND EVERY  
15 CAUSE OF ACTION THEREOF, this answering defendant alleges that at all times relative to  
16 matters alleged in the complaint, all of plaintiff's employers were sophisticated users of asbestos-  
17 containing products and said employers' negligence in providing the product to its employees in a  
18 negligent, careless and reckless manner was a superseding intervening cause of plaintiff's injuries, if  
19 any there were.

20 AS AND FOR A FOURTEENTH, SEPARATE, AND AFFIRMATIVE DEFENSE  
21 TO THE COMPLAINT OF PLAINTIFF ON FILE HEREIN AND TO EACH AND EVERY  
22 CAUSE OF ACTION THEREOF, this answering defendant alleges plaintiff is barred from recovery  
23 in that all products produced by defendant were in conformity with the existing state-of-the-art, and  
24 as a result, these products were not defective in any manner.

25 AS AND FOR A FIFTEENTH, SEPARATE, AND AFFIRMATIVE DEFENSE TO  
26 THE COMPLAINT OF PLAINTIFF ON FILE HEREIN AND TO EACH AND EVERY CAUSE  
27 OF ACTION THEREOF, this answering defendant alleges that plaintiff fails to state facts sufficient  
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1 to constitute a cause of action upon which punitive damages may be awarded as against this  
2 answering defendant.

3 AS AND FOR A SIXTEENTH, SEPARATE, AND AFFIRMATIVE DEFENSE TO  
4 THE COMPLAINT OF PLAINTIFF ON FILE HEREIN AND TO EACH AND EVERY CAUSE  
5 OF ACTION THEREOF, this answering defendant alleges that the court lacks subject matter  
6 jurisdiction over the matters alleged in the Complaint because the Complaint and each alleged cause  
7 of action against defendant is barred by the "Exclusive Remedy" provisions of California Labor  
8 Code Section 3601, et seq.

9 AS AND FOR A SEVENTEENTH, SEPARATE, AND AFFIRMATIVE DEFENSE  
10 TO THE COMPLAINT OF PLAINTIFF ON FILE HEREIN AND TO EACH AND EVERY  
11 CAUSE OF ACTION THEREOF, this answering defendant reserves the right to amend its answer,  
12 including the addition of affirmative defenses after pleading and discovery in preparation for trial.

13 WHEREFORE, said defendant prays for judgment for its costs of suit.

14 DATED: February 7, 2008

**KNOX RICKSEN LLP**

16 By: /S/ Gregory D. Pike  
17 Gregory D. Pike  
18 Attorneys for Defendant  
19 ALLIS-CHALMERS CORPORATION  
20 PRODUCT LIABILITY TRUST  
21  
22  
23  
24  
25  
26  
27  
28

Re: Jorgensen v. Asbestos Defendants (BP), et al.  
San Francisco Superior Court No. CGC-07-274494

**PROOF OF SERVICE BY ELECTRONIC TRANSMISSION**

I, the undersigned, declare: that I am and was at the time of service of the documents herein referred to, over the age of 18 years, and not a party to the action; and I am employed in the County of Alameda, California. My business address is 1300 Clay Street, Suite 500, Oakland, California 94612-1427.

On the date executed below, I electronically served the document(s) via LexisNexis File & Serve described as:

**ALLIS-CHALMERS CORP. PRODUCT LIABILITY TRUST'S ANSWER TO  
COMPLAINT FOR PERSONAL INJURY AND LOSS OF CONSORTIUM- ASBESTOS**

on the recipients designated on the Transaction Receipt located on the LexisNexis File & Serve website. I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct and was executed on February 7, 2008, at Oakland, California.

/s/ Nicholas J. Bertolino  
Nicholas J. Bertolino

# **EXHIBIT 10**

1 HASSARD BONNINGTON LLP  
2 ROBERT M. HAMBLETT, ESQ., State Bar No. 111685  
3 B. THOMAS FRENCH, ESQ., State Bar No. 65848  
4 Two Embarcadero Center, Suite 1800  
San Francisco, California 94111-3993  
Telephone: (415) 288-9800  
Fax: (415) 288-9801

5 Attorneys for Defendant  
6 HANSON PERMANENTE CEMENT, INC.,  
formerly known as Kaiser Cement Corporation

7  
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF SAN FRANCISCO

10  
11 THOMAS JORGENSEN and PATRICIA  
JORGENSEN,

12 Plaintiffs,

13 vs.

14 A.W. CHESTERTON CO., et al.,

15 Defendants.

No. CGC-08-274494

**DEFENDANT HANSON  
PERMANENTE CEMENT, INC.'S  
OBJECTION TO ASSIGNMENT TO  
COMMISSIONER FOR TRIAL**

16 **PLEASE TAKE NOTICE** THAT PURSUANT TO San Francisco County  
17 Uniform Local Rules, Rule 6.1(c), defendant HANSON PERMANENTE CEMENT,  
18 INC., formerly known as Kaiser Cement Corporation, does not stipulate and hereby  
19 objects to any assignment of this case for trial by a Commissioner. Defendant's first  
20 pleading is filed concurrently herewith.

21 Dated: February 7, 2008

22 HASSARD BONNINGTON LLP

23  
24 By: /s/ B. Thomas French  
B. Thomas French

25 Attorneys for Defendant  
26 HANSON PERMANENTE CEMENT, INC.,  
27 formerly known as Kaiser Cement  
28 Corporation



**PROOF OF SERVICE**

**CASE NAME:** THOMAS and PATRICIA JORGENSEN v. A.W. CHESTERTON CO., et al.

**COURT:** San Francisco County Superior Court

**CASE NUMBER:** CGC-08-274494

I, the undersigned, hereby certify that I am a citizen of the United States, over the age of eighteen years, and am not a party to the within action. I am employed in the City and County of San Francisco, California, and my business address is Two Embarcadero Center, Suite 1800, San Francisco, California 94111-3993. On the date last written below, following ordinary business practice, I electronically served the following document(s):

**DEFENDANT HANSON PERMANENTE CEMENT, INC.'S OBJECTION TO  
ASSIGNMENT TO COMMISSIONER FOR TRIAL**

via LexisNexis File & Serve on the recipients designated on the Transaction Receipt located on the LexisNexis File & Serve website.

I declare under penalty of perjury that the foregoing is true and correct and that this Proof of Service was executed on February 7, 2008, at San Francisco, California.

/s/ Jessica Wertzler  
Jessica Wertzler

# **EXHIBIT 11**

HASSARD BONNINGTON LLP  
ROBERT M. HAMBLETT, ESQ., State Bar No. 111685  
B. THOMAS FRENCH, ESQ., State Bar No. 65848  
Two Embarcadero Center, Suite 1800  
San Francisco, California 94111-3993  
Telephone: (415) 288-9800  
Fax: (415) 288-9802

Attorneys for Defendant  
HANSON PERMANENTE CEMENT, INC.,  
formerly known as Kaiser Cement Corporation

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN FRANCISCO

THOMAS JORGENSEN and PATRICIA  
JORGENSEN,

Plaintiffs,

vs.

A.W. CHESTERTON CO., et al.,

Defendants.

No. CGC-08-274494

**DEFENDANT HANSON  
PERMANENTE CEMENT, INC.'S  
DEMAND FOR JURY TRIAL**

TO EACH PARTY AND TO THEIR RESPECTIVE ATTORNEYS OF RECORD:

Defendant HANSON PERMANENT CEMENT, INC., formerly known as  
Kaiser Cement Corporation, hereby demands a jury trial in the above-entitled action.

Dated: February 7, 2008

HASSARD BONNINGTON LLP

By: /s/ B. Thomas French  
B. Thomas French

Attorneys for Defendant  
HANSON PERMANENTE CEMENT, INC.,  
formerly known as Kaiser Cement  
Corporation

**PROOF OF SERVICE**

**CASE NAME:** THOMAS and PATRICIA JORGENSEN v. A.W. CHESTERTON CO., et al.

**COURT:** San Francisco County Superior Court

**CASE NUMBER:** CGC-08-274494

I, the undersigned, hereby certify that I am a citizen of the United States, over the age of eighteen years, and am not a party to the within action. I am employed in the City and County of San Francisco, California, and my business address is Two Embarcadero Center, Suite 1800, San Francisco, California 94111-3993. On the date last written below, following ordinary business practice, I electronically served the following document(s):

**DEFENDANT HANSON PERMANENTE CEMENT, INC.'S DEMAND FOR JURY TRIAL**

via LexisNexis File & Serve on the recipients designated on the Transaction Receipt located on the LexisNexis File & Serve website.

I declare under penalty of perjury that the foregoing is true and correct and that this Proof of Service was executed on February 7, 2008, at San Francisco, California.

/s/ Jessica Wertzler  
Jessica Wertzler

# **EXHIBIT 12**

1 HASSARD BONNINGTON LLP  
2 ROBERT M. HAMBLETT, ESQ., State Bar No. 111685  
3 B. THOMAS FRENCH, ESQ., State Bar No. 65848  
4 Two Embarcadero Center, Suite 1800  
San Francisco, California 94111-3993  
Telephone: (415) 288-9800  
Fax: (415) 288-9801

5 Attorneys for Defendant  
6 HANSON PERMANENTE CEMENT, INC.,  
formerly known as Kaiser Cement Corporation

7  
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF SAN FRANCISCO

10  
11 THOMAS JORGENSEN and PATRICIA  
12 JORGENSEN,

13 Plaintiffs,

14 vs.

15 A.W. CHESTERTON CO., et al.,

16 Defendants.

No. CGC-08-274494

**ANSWER OF DEFENDANT HANSON  
PERMANENTE CEMENT, INC. TO  
UNVERIFIED COMPLAINT FOR  
DAMAGES -- ASBESTOS**

17  
18  
19 Defendant, HANSON PERMANENTE CEMENT, INC., formerly known  
20 as Kaiser Cement Corporation (hereinafter "Defendant"), for itself alone and on behalf  
21 of no other defendant or entity, answers the unverified Complaint for damages --  
22 asbestos ("Complaint") on file herein as set forth below. The word "Plaintiff," as used  
23 herein, shall include the plural (i.e., plaintiffs) as well as the singular (i.e., plaintiff) and  
24 the feminine as well as the masculine, and shall also include Plaintiff's decedent as  
25 may be appropriate to the particular context in which the word appears.

26 Pursuant to California Code of Civil Procedure section 431.30(d),  
27 Defendant denies generally each and every allegation of the Complaint.  
28

1 FIRST AFFIRMATIVE DEFENSE

2 Neither the Complaint nor any purported cause of action alleged by the  
3 Plaintiff therein states facts sufficient to constitute a cause of action against  
4 Defendant.

5 SECOND AFFIRMATIVE DEFENSE

6 To the extent the Complaint asserts Defendant's alleged "market share"  
7 liability, or "enterprise liability," the Complaint fails to state facts sufficient to constitute  
8 a cause of action against Defendant.

9 THIRD AFFIRMATIVE DEFENSE

10 Neither the Complaint nor any purported cause of action alleged therein  
11 states facts sufficient to entitle Plaintiff to an award of punitive damages against  
12 Defendant.

13 FOURTH AFFIRMATIVE DEFENSE

14 The imposition of any punitive damages in this matter would deprive  
15 Defendant of its property without due process of law under the California Constitution  
16 and United States Constitution.

17 FIFTH AFFIRMATIVE DEFENSE

18 The imposition of any punitive damages in this matter would violate the  
19 United States Constitution's prohibition against laws impairing the obligation of  
20 contracts.

21 SIXTH AFFIRMATIVE DEFENSE

22 The imposition of any punitive damages in this matter would constitute a  
23 criminal fine or penalty and should, therefore, be remitted on the ground the award  
24 violates the United States Constitution.

25 SEVENTH AFFIRMATIVE DEFENSE

26 Plaintiff's action, and each alleged cause of action, is barred by the  
27 applicable statute of limitations, including but not limited to California Code of Civil  
28 Procedure sections 335.1, 337, 337.1, 338, 338.1, 339, 340, 340.2, 340.8, 343 and

1 361, and California Commercial Code section 2725.

2 EIGHTH AFFIRMATIVE DEFENSE

3 Plaintiff unreasonably delayed in bringing this action, without good  
4 cause therefor, and thereby has prejudiced Defendant as a direct and proximate  
5 result of such delay; accordingly, the action is barred by laches and by section 583  
6 et. seq., of the California Code of Civil Procedure.

7 NINTH AFFIRMATIVE DEFENSE

8 Plaintiff was negligent in and about the matters alleged in the Complaint  
9 and in each alleged cause of action, and this negligence proximately caused, in whole  
10 or in part, the loss, injury, and damages incurred by Plaintiff, if any there were. In the  
11 event Plaintiff is entitled to any damages, the amount of these damages should be  
12 reduced by the comparative fault of Plaintiff and of any person whose negligent acts  
13 or omissions are imputed to Plaintiff.

14 TENTH AFFIRMATIVE DEFENSE

15 Plaintiff knowingly, voluntarily and unreasonably undertook to encounter  
16 each of the risks and hazards, if any, referred to in the Complaint and each alleged  
17 cause of action therein, and this undertaking proximately caused and contributed to  
18 the loss, injury and damages incurred by Plaintiff, if any there were.

19 ELEVENTH AFFIRMATIVE DEFENSE

20 Any loss, injury or damage incurred by Plaintiff was proximately caused  
21 by the negligent or willful acts or omissions or other fault of parties whom Defendant  
22 neither controlled nor had the right to control, and was not proximately caused by any  
23 acts, omissions or other conduct of Defendant.

24 TWELFTH AFFIRMATIVE DEFENSE

25 The products referred to in the Complaint were misused, abused or  
26 altered by Plaintiff or by others; the misuse, abuse or alteration was not reasonably  
27 foreseeable to Defendant, and proximately caused the loss, injury and damages  
28 incurred by Plaintiff, if any there were.



1                                    THIRTEENTH AFFIRMATIVE DEFENSE

2                    Plaintiff failed to exercise due diligence to mitigate the claimed loss,  
3 injury and damages incurred by Plaintiff, if any there were. Accordingly, the amount  
4 of damages to which Plaintiff is entitled, if any, should be reduced by the amount of  
5 damages which would have otherwise been mitigated.

6                                    FOURTEENTH AFFIRMATIVE DEFENSE

7                    The Court lacks subject matter jurisdiction over the matters alleged in  
8 the Complaint because the Complaint and each alleged cause of action against  
9 Defendant are barred by the provisions of California Labor Code, section 3600,  
10 et seq.

11                                   FIFTEENTH AFFIRMATIVE DEFENSE

12                    At the time of the injuries alleged in the Complaint, Plaintiff was  
13 employed and was entitled to receive workers' compensation benefits from his  
14 employer's workers' compensation insurance carrier, and all of Plaintiff's employers,  
15 other than Defendant, were negligent in and about the matters referred to in said  
16 Complaint. Such negligence on the part of said employers proximately and  
17 concurrently contributed to the happening of the accident and to the loss, injury and  
18 damages alleged in the Complaint. By reason thereof Defendant is entitled to set off  
19 and/or reduce any such workers' compensation benefits received or to be received by  
20 Plaintiff against any judgment that may be rendered in favor of Plaintiff. (Witt v.  
21 Jackson, 57 Cal.2d 57, 366 P.2d 641)

22                                   SIXTEENTH AFFIRMATIVE DEFENSE

23                    Defendant alleges that at the time of the injuries alleged in the  
24 Complaint, Plaintiff's employers were negligent in and about the matters referred to in  
25 said Complaint, and that such negligence on the part of said employers proximately  
26 and concurrently contributed to any loss or damage, including non-economic  
27 damages, incurred by Plaintiff, if any there were. As a result, Defendant is not liable  
28 for said employers' proportionate share of non-economic damages.

1                                    SEVENTEENTH AFFIRMATIVE DEFENSE

2                    At the time of the injuries alleged in the Complaint, parties other than  
3 this Defendant were negligent or otherwise at fault in and about the matters referred  
4 to in said Complaint, and such negligence or other fault on the part of said parties  
5 proximately and concurrently contributed to the loss, injury or damages, including  
6 non-economic damages, incurred by Plaintiff, if any there were. As a result,  
7 Defendant is not liable for said parties' proportionate share of non-economic  
8 damages.

9                                    EIGHTEENTH AFFIRMATIVE DEFENSE

10                   At all times relevant to matters alleged in the Complaint, all of Plaintiff's  
11 employers, other than Defendant, were sophisticated users of asbestos-containing  
12 products, and said employers' negligence in providing the product to its employees in  
13 a negligent, careless and reckless manner was a superseding cause of the loss,  
14 injury or damages incurred by Plaintiff, if any there were.

15                                   NINETEENTH AFFIRMATIVE DEFENSE

16                   Defendant is informed and believes that Plaintiff has received, or in the  
17 future may receive, Worker's Compensation benefits from Defendant under the Labor  
18 Code of the State of California as a consequence of the alleged industrial injury  
19 referred to in the Complaint. In the event Plaintiff is awarded damages against  
20 Defendant, Defendant claims a credit against such award to the extent Defendant is  
21 barred from enforcing its right to reimbursement for Worker's Compensation benefits  
22 that Plaintiff has received or may receive in the future.

23                                   TWENTIETH AFFIRMATIVE DEFENSE

24                   If Plaintiff has received, or in the future may receive, Worker's  
25 Compensation benefits from Defendant under the Labor Code of the State of  
26 California as a consequence of the alleged industrial injury referred to in the  
27 Complaint, Defendant demands repayment of any such worker's compensation  
28 benefits in the event that Plaintiff recovers tort damages as a result of that industrial

1 injury. Although Defendant denies the validity of Plaintiff's claims, in the event those  
2 claims are held valid and not barred by the statute of limitations or otherwise,  
3 Defendant asserts that cross-demands for money have existed between Plaintiff and  
4 Defendant and the demands are compensated, so far as they equal each other,  
5 pursuant to California Code of Civil Procedure section 431.70.

6 TWENTY-FIRST AFFIRMATIVE DEFENSE

7 At all times and places relevant to the claims alleged in the Complaint,  
8 Plaintiff was not in privity of contract with Defendant and said lack of privity bars  
9 Plaintiff's recovery herein upon any theory of warranty.

10 TWENTY-SECOND AFFIRMATIVE DEFENSE

11 Plaintiff is barred from recovery in that all products produced by  
12 Defendant were in conformity with the existing state-of-the-art and, as a result, those  
13 products were not defective in any manner.

14 TWENTY-THIRD AFFIRMATIVE DEFENSE

15 Defendant did not and does not have a substantial percentage of the  
16 market for the asbestos-containing products which allegedly caused Plaintiff's  
17 injuries. As a result, Defendant may not be held liable to Plaintiff based on this  
18 Defendant's alleged percentage share of the applicable market.

19 TWENTY-FOURTH AFFIRMATIVE DEFENSE

20 Defendant denies any and all liability to the extent Plaintiff asserts  
21 Defendant's alleged liability as a successor, successor in business, successor in  
22 product line or a portion thereof, assign, predecessor, predecessor in business,  
23 predecessor in product line or a portion thereof, parent, alter ego, subsidiary, wholly  
24 or partially owned by, or the whole or partial owner of or member in an entity  
25 researching, studying, manufacturing, fabricating, designing, labeling, assembling,  
26 distributing, leasing, buying, offering for sale, selling, inspecting, servicing, installing,  
27 contracting for installation, repairing, marketing, warranting, re-branding,  
28 manufacturing for others, packaging and advertising a certain substance, the generic

1 name of which is asbestos.

2 TWENTY-FIFTH AFFIRMATIVE DEFENSE

3 As a result of the acts, conduct, and omissions of Plaintiff and Plaintiff's  
4 agents, each cause of action alleged in the Complaint has been waived.

5 TWENTY-SIXTH AFFIRMATIVE DEFENSE

6 Plaintiff's tobacco use constitutes an assumption of a known risk, and  
7 said conduct by Plaintiff proximately caused and contributed to the loss, injury or  
8 damages incurred by Plaintiff, if any there were. Any recovery by Plaintiff is therefore  
9 barred or must be proportionately reduced.

10 TWENTY-SEVENTH AFFIRMATIVE DEFENSE

11 Defendant alleges that consumption of tobacco products is negligent  
12 *per se* because it is "inherently unsafe and consumed with the ordinary community  
13 knowledge of its danger," as expressed in Richards v. Owens-Illinois, Inc. (1997)  
14 14 Cal.4th 985, and California Civil Code section 1714.45(a)(1). The said negligence  
15 of Plaintiff proximately caused and contributed to the loss, injury or damages incurred  
16 by Plaintiff, if any there were, and any recovery by Plaintiff is therefore barred or must  
17 be proportionately reduced.

18 TWENTY-EIGHTH AFFIRMATIVE DEFENSE

19 Defendant is informed and believes that Plaintiff named Defendant in  
20 this litigation without reasonable product identification and without a reasonable  
21 investigation. Pursuant to California Code of Civil Procedure section 128.5,  
22 Defendant requests an award of reasonable expenses, including attorney's fees,  
23 incurred by Defendant as a result of Plaintiff's bad faith maintenance of this action.

24 TWENTY-NINTH AFFIRMATIVE DEFENSE

25 The loss, injury or damages incurred by Plaintiff, if any there were, were  
26 proximately caused by an unforeseeable, independent, intervening or superseding  
27 event beyond the control, and unrelated to any conduct of Defendant. Defendant's  
28 actions, if any, were superseded by the negligence, wrongful conduct, and other fault

1 of others.

2 THIRTIETH AFFIRMATIVE DEFENSE

3 Defendant alleges that Plaintiff has failed to join all indispensable and/or  
4 essential parties needed for just adjudication of this action. The action should  
5 therefore be stayed pending joinder of all essential and/or indispensable parties or, in  
6 the alternative, the action should be dismissed.

7 THIRTY-FIRST AFFIRMATIVE DEFENSE

8 Plaintiff has improperly split the causes of action and seeks to maintain  
9 a duplicative lawsuit based on the same facts and circumstances as a lawsuit  
10 previously filed.

11 THIRTY-SECOND AFFIRMATIVE DEFENSE

12 California Civil Code sections 1431.1– 1431.5, known as the Fair  
13 Responsibility Act of 1986, are applicable to the present action and to certain claims  
14 therein. As a result, based upon the principle of comparative fault, the liability, if any,  
15 of Defendant, shall be several only and shall not be joint. Defendant, if liable at all,  
16 shall be liable as to certain claims only for the amount of non-economic damages  
17 allocated to Defendant in direct proportion to Defendant's percentage of fault, if any,  
18 and a separate and several judgment shall be rendered against Defendant for non-  
19 economic damages, if any.

20 THIRTY-THIRD AFFIRMATIVE DEFENSE

21 Plaintiff's Complaint, and each and every cause of action therein based  
22 upon warranty or breach thereof, is barred as a result of Plaintiff's failure to give  
23 notice required under California Commercial Code section 2607(3)(a).

24 THIRTY-FOURTH AFFIRMATIVE DEFENSE

25 If Defendant has purportedly been named or served in this action as a  
26 fictitiously-named defendant, Plaintiff's attempt to do so is invalid in that Plaintiff knew  
27 or should have known of Defendant's identity and of Plaintiff's alleged causes of  
28 action against Defendant at the time of filing of the Complaint.

1                                    THIRTY-FIFTH AFFIRMATIVE DEFENSE

2                    Defendant refers to and incorporates herein by reference each and  
3                    every affirmative defense pleaded by the other parties to this action the extent such  
4                    defenses are not inconsistent with the matters stated herein.

5                                    THIRTY-SIXTH AFFIRMATIVE DEFENSE

6                    Defendant presently has insufficient knowledge or information on which  
7                    to form a belief as to whether it may have additional, as yet unasserted, defenses  
8                    available. Defendant reserves the right to assert additional defenses in the event  
9                    discovery indicates they would be appropriate.

10  
11                    WHEREFORE, Defendant prays:

- 12                    (1)     That Plaintiff take nothing by this Complaint;  
13                    (2)     That judgment be entered in favor of Defendant;  
14                    (3)     For recovery of Defendant's costs of suit;  
15                    (4)     For appropriate credits and off-sets arising out of any payment of  
16                    worker's compensation benefits as alleged above; and;  
17                    (5)     For such other and further relief as the Court deems just and  
18                    proper.

19                    Dated: February 7, 2008

20                                    HASSARD BONNINGTON LLP

21  
22                                    By: /s/ B. Thomas French  
23    B. Thomas French

24                                    Attorneys for Defendant  
25                                    HANSON PERMANENTE CEMENT, INC.,  
26                                    formerly known as Kaiser Cement  
27                                    Corporation  
28

**PROOF OF SERVICE**

**CASE NAME:** THOMAS and PATRICIA JORGENSEN v. A.W. CHESTERTON CO., et al.

**COURT:** San Francisco County Superior Court

**CASE NUMBER:** CGC-08-274494

I, the undersigned, hereby certify that I am a citizen of the United States, over the age of eighteen years, and am not a party to the within action. I am employed in the City and County of San Francisco, California, and my business address is Two Embarcadero Center, Suite 1800, San Francisco, California 94111-3993. On the date last written below, following ordinary business practice, I electronically served the following document(s):

**ANSWER OF DEFENDANT HANSON PERMANENTE CEMENT, INC. TO UNVERIFIED COMPLAINT FOR DAMAGES -- ASBESTOS**

via LexisNexis File & Serve on the recipients designated on the Transaction Receipt located on the LexisNexis File & Serve website.

I declare under penalty of perjury that the foregoing is true and correct and that this Proof of Service was executed on February 7, 2008, at San Francisco, California.

/s/ Jessica Wertzler  
Jessica Wertzler

# **EXHIBIT 13**



1 HASSARD BONNINGTON LLP  
2 ROBERT M. HAMBLETT, ESQ., State Bar No. 111685  
3 B. THOMAS FRENCH, ESQ., State Bar No. 65848  
4 Two Embarcadero Center, Suite 1800  
San Francisco, California 94111-3993  
Telephone: (415) 288-9800  
Fax: (415) 288-9802

5 Attorneys for Defendant  
6 KAISER GYPSUM COMPANY, INC.

7  
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF SAN FRANCISCO

10 THOMAS JORGENSEN and PATRICIA  
11 JORGENSEN,

12  
13 Plaintiffs,

14 vs.

15 A.W. CHESTERTON CO., et al.,

16 Defendants.  
17  
18

No. CGC-08-274494

**DEFENDANT KAISER GYPSUM  
COMPANY INC.'S, OBJECTION TO  
ASSIGNMENT TO COMMISSIONER  
FOR TRIAL**

19 **PLEASE TAKE NOTICE** THAT PURSUANT TO San Francisco County  
20 Uniform Local Rules, Rule 6.1(c), defendant KAISER GYPSUM COMPANY, INC.  
21 does not stipulate and hereby objects to any assignment of this case for trial by a  
22 Commissioner. Defendant's first pleading is filed concurrently herewith.

23 Dated: February 7, 2008

24 HASSARD BONNINGTON LLP

25 By: /s/ B. Thomas French  
26 B. Thomas French

27 Attorneys for Defendant  
28 KAISER GYPSUM COMPANY, INC.

**PROOF OF SERVICE**

**CASE NAME:** THOMAS and PATRICIA JORGENSEN v. A.W. CHESTERTON CO., et al.

**COURT:** San Francisco County Superior Court

**CASE NUMBER:** CGC-08-274494

I, the undersigned, hereby certify that I am a citizen of the United States, over the age of eighteen years, and am not a party to the within action. I am employed in the City and County of San Francisco, California, and my business address is Two Embarcadero Center, Suite 1800, San Francisco, California 94111-3993. On the date last written below, following ordinary business practice, I electronically served the following document(s):

**DEFENDANT KAISER GYPSUM COMPANY INC.'S OBJECTION TO  
ASSIGNMENT TO COMMISSIONER FOR TRIAL**

via LexisNexis File & Serve on the recipients designated on the Transaction Receipt located on the LexisNexis File & Serve website.

I declare under penalty of perjury that the foregoing is true and correct and that this Proof of Service was executed on February 7, 2008, at San Francisco, California.

/s/ Jessica Wertzler  
Jessica Wertzler

# **EXHIBIT 14**

1 HASSARD BONNINGTON LLP  
2 ROBERT M. HAMBLETT, ESQ., State Bar No. 111685  
3 B. THOMAS FRENCH, ESQ., State Bar No. 65848  
4 Two Embarcadero Center, Suite 1800  
San Francisco, California 94111-3993  
Telephone: (415) 288-9800  
Fax: (415) 288-9802

5 Attorneys for Defendant  
6 KAISER GYPSUM COMPANY, INC.

7  
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF SAN FRANCISCO

10  
11 THOMAS JORGENSEN and PATRICIA  
12 JORGENSEN,

13 Plaintiffs,

14 vs.

15 A.W. CHESTERTON CO., et al.,

16 Defendants.

No. CGC-08-274494

**DEFENDANT KAISER GYPSUM  
COMPANY, INC.'S DEMAND FOR  
JURY TRIAL**

17 TO EACH PARTY AND TO THEIR RESPECTIVE ATTORNEYS OF RECORD

18 Defendant KAISER GYPSUM COMPANY, INC. hereby demands a jury  
19 trial in the above-entitled action.

20 Dated: February 7, 2008

21  
22 HASSARD BONNINGTON LLP

23 By: /s/ B. Thomas French  
24 B. Thomas French

25 Attorneys for Defendant  
26 KAISER GYPSUM COMPANY, INC.

**PROOF OF SERVICE**

**CASE NAME:** THOMAS and PATRICIA JORGENSEN v. A.W. CHESTERTON CO., et al.

**COURT:** San Francisco County Superior Court

**CASE NUMBER:** CGC-08-274494

I, the undersigned, hereby certify that I am a citizen of the United States, over the age of eighteen years, and am not a party to the within action. I am employed in the City and County of San Francisco, California, and my business address is Two Embarcadero Center, Suite 1800, San Francisco, California 94111-3993. On the date last written below, following ordinary business practice, I electronically served the following document(s):

**DEFENDANT KAISER GYPSUM COMPANY INC.'S DEMAND FOR JURY TRIAL**

via LexisNexis File & Serve on the recipients designated on the Transaction Receipt located on the LexisNexis File & Serve website.

I declare under penalty of perjury that the foregoing is true and correct and that this Proof of Service was executed on February 7, 2008, at San Francisco, California.

/s/ Jessica Wertzler  
Jessica Wertzler

# **EXHIBIT 15**

1 HASSARD BONNINGTON LLP  
2 ROBERT M. HAMBLETT, ESQ., State Bar No. 111685  
3 B. THOMAS FRENCH, ESQ., State Bar No. 65848  
4 Two Embarcadero Center, Suite 1800  
San Francisco, California 94111-3993  
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5 Attorneys for Defendant  
6 KAISER GYPSUM COMPANY, INC.

7  
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF SAN FRANCISCO

10  
11 THOMAS JORGENSEN and PATRICIA  
12 JORGENSEN,

13 Plaintiffs,

14 vs.

15 A.W. CHESTERTON CO., et al.,

16 Defendant.  
17

No. CGC-08-274494

**ANSWER OF DEFENDANT  
KAISER GYPSUM COMPANY, INC.  
TO UNVERIFIED COMPLAINT FOR  
DAMAGES -- ASBESTOS**

18 Defendant, KAISER GYPSUM COMPANY, INC. (hereinafter  
19 "Defendant"), for itself alone and on behalf of no other defendant or entity, answers  
20 the unverified Complaint for Damages ("Complaint") on file herein as set forth below.  
21 The word "Plaintiff," as used herein, shall include the plural (i.e., Plaintiffs) as well as  
22 the singular (i.e., Plaintiff) and the feminine as well as the masculine, and shall also  
23 include Plaintiff's decedent as may be appropriate to the particular context in which  
24 the word appears.

25 Pursuant to California Code of Civil Procedure section 431.30(d),  
26 Defendant deny generally each and every allegation of the Complaint.  
27  
28

1 FIRST AFFIRMATIVE DEFENSE

2 Neither the Complaint nor any purported cause of action alleged by the  
3 Plaintiff therein states facts sufficient to constitute a cause of action against  
4 Defendant.

5 SECOND AFFIRMATIVE DEFENSE

6 To the extent the Complaint asserts Defendant's alleged "market share"  
7 liability, or "enterprise liability," the Complaint fails to state facts sufficient to constitute  
8 a cause of action against Defendant.

9 THIRD AFFIRMATIVE DEFENSE

10 Neither the Complaint nor any purported cause of action alleged therein  
11 states facts sufficient to entitle Plaintiff to an award of punitive damages against  
12 Defendant.

13 FOURTH AFFIRMATIVE DEFENSE

14 The imposition of any punitive damages in this matter would deprive  
15 Defendant of its property without due process of law under the California Constitution  
16 and United States Constitution.

17 FIFTH AFFIRMATIVE DEFENSE

18 The imposition of any punitive damages in this matter would violate the  
19 United States Constitution's prohibition against laws impairing the obligation of  
20 contracts.

21 SIXTH AFFIRMATIVE DEFENSE

22 The imposition of any punitive damages in this matter would constitute a  
23 criminal fine or penalty and should, therefore, be remitted on the ground the award  
24 violates the United States Constitution.

25 SEVENTH AFFIRMATIVE DEFENSE

26 Plaintiff's action, and each alleged cause of action, is barred by the  
27 applicable statute of limitations, including but not limited to California Code of Civil  
28 Procedure sections 335.1, 337, 337.1, 338, 338.1, 339, 340, 340.2, 340.8, 343 and



1 361, and California Commercial Code section 2725.

2 EIGHTH AFFIRMATIVE DEFENSE

3 Plaintiff unreasonably delayed in bringing this action, without good  
4 cause therefor, and thereby has prejudiced Defendant as a direct and proximate  
5 result of such delay; accordingly, the action is barred by laches and by section 583  
6 et. seq., of the California Code of Civil Procedure.

7 NINTH AFFIRMATIVE DEFENSE

8 Plaintiff was negligent in and about the matters alleged in the Complaint  
9 and in each alleged cause of action, and this negligence proximately caused, in whole  
10 or in part, the loss, injury, and damages incurred by Plaintiff, if any there were. In the  
11 event Plaintiff is entitled to any damages, the amount of these damages should be  
12 reduced by the comparative fault of Plaintiff and of any person whose negligent acts  
13 or omissions are imputed to Plaintiff.

14 TENTH AFFIRMATIVE DEFENSE

15 Plaintiff knowingly, voluntarily and unreasonably undertook to encounter  
16 each of the risks and hazards, if any, referred to in the Complaint and each alleged  
17 cause of action therein, and this undertaking proximately caused and contributed to  
18 the loss, injury and damages incurred by Plaintiff, if any there were.

19 ELEVENTH AFFIRMATIVE DEFENSE

20 Any loss, injury or damage incurred by Plaintiff was proximately caused  
21 by the negligent or willful acts or omissions or other fault of parties whom Defendant  
22 neither controlled nor had the right to control, and was not proximately caused by any  
23 acts, omissions or other conduct of Defendant.

24 TWELFTH AFFIRMATIVE DEFENSE

25 The products referred to in the Complaint were misused, abused or  
26 altered by Plaintiff or by others; the misuse, abuse or alteration was not reasonably  
27 foreseeable to Defendant, and proximately caused the loss, injury and damages  
28 incurred by Plaintiff, if any there were.

1                                    THIRTEENTH AFFIRMATIVE DEFENSE

2                    Plaintiff failed to exercise due diligence to mitigate the claimed loss,  
3 injury and damages incurred by Plaintiff, if any there were. Accordingly, the amount  
4 of damages to which Plaintiff is entitled, if any, should be reduced by the amount of  
5 damages which would have otherwise been mitigated.

6                                    FOURTEENTH AFFIRMATIVE DEFENSE

7                    The Court lacks subject matter jurisdiction over the matters alleged in  
8 the Complaint because the Complaint and each alleged cause of action against  
9 Defendant are barred by the provisions of California Labor Code, section 3600,  
10 et seq.

11                                   FIFTEENTH AFFIRMATIVE DEFENSE

12                   At the time of the injuries alleged in the Complaint, Plaintiff was  
13 employed and was entitled to receive workers' compensation benefits from his  
14 employer's workers' compensation insurance carrier, and all of Plaintiff's employers,  
15 other than Defendant, were negligent in and about the matters referred to in said  
16 Complaint. Such negligence on the part of said employers proximately and  
17 concurrently contributed to the happening of the accident and to the loss, injury and  
18 damages alleged in the Complaint. By reason thereof Defendant is entitled to set off  
19 and/or reduce any such workers' compensation benefits received or to be received by  
20 Plaintiff against any judgment that may be rendered in favor of Plaintiff. (Witt v.  
21 Jackson, 57 Cal.2d 57, 366 P.2d 641)

22                                   SIXTEENTH AFFIRMATIVE DEFENSE

23                   Defendant alleges that at the time of the injuries alleged in the  
24 Complaint, Plaintiff's employers were negligent in and about the matters referred to in  
25 said Complaint, and that such negligence on the part of said employers proximately  
26 and concurrently contributed to any loss or damage, including non-economic  
27 damages, incurred by Plaintiff, if any there were. As a result, Defendant is not liable  
28 for said employers' proportionate share of non-economic damages.

1                                    SEVENTEENTH AFFIRMATIVE DEFENSE

2                    At the time of the injuries alleged in the Complaint, parties other than  
3 this Defendant were negligent or otherwise at fault in and about the matters referred  
4 to in said Complaint, and such negligence or other fault on the part of said parties  
5 proximately and concurrently contributed to the loss, injury or damages, including  
6 non-economic damages, incurred by Plaintiff, if any there were. As a result,  
7 Defendant is not liable for said parties' proportionate share of non-economic  
8 damages.

9                                    EIGHTEENTH AFFIRMATIVE DEFENSE

10                   At all times relevant to matters alleged in the Complaint, all of Plaintiff's  
11 employers, other than Defendant, were sophisticated users of asbestos-containing  
12 products, and said employers' negligence in providing the product to its employees in  
13 a negligent, careless and reckless manner was a superseding cause of the loss,  
14 injury or damages incurred by Plaintiff, if any there were.

15                                   NINETEENTH AFFIRMATIVE DEFENSE

16                   Defendant is informed and believes that Plaintiff has received, or in the  
17 future may receive, Worker's Compensation benefits from Defendant under the Labor  
18 Code of the State of California as a consequence of the alleged industrial injury  
19 referred to in the Complaint. In the event Plaintiff is awarded damages against  
20 Defendant, Defendant claims a credit against such award to the extent Defendant is  
21 barred from enforcing its right to reimbursement for Worker's Compensation benefits  
22 that Plaintiff has received or may receive in the future.

23                                   TWENTIETH AFFIRMATIVE DEFENSE

24                   If Plaintiff has received, or in the future may receive, Worker's  
25 Compensation benefits from Defendant under the Labor Code of the State of  
26 California as a consequence of the alleged industrial injury referred to in the  
27 Complaint, Defendant demands repayment of any such worker's compensation  
28 benefits in the event that Plaintiff recovers tort damages as a result of that industrial

1 injury. Although Defendant denies the validity of Plaintiff's claims, in the event those  
2 claims are held valid and not barred by the statute of limitations or otherwise,  
3 Defendant asserts that cross-demands for money have existed between Plaintiff and  
4 Defendant and the demands are compensated, so far as they equal each other,  
5 pursuant to California Code of Civil Procedure section 431.70.

6 TWENTY-FIRST AFFIRMATIVE DEFENSE

7 At all times and places relevant to the claims alleged in the Complaint,  
8 Plaintiff was not in privity of contract with Defendant and said lack of privity bars  
9 Plaintiff's recovery herein upon any theory of warranty.

10 TWENTY-SECOND AFFIRMATIVE DEFENSE

11 Plaintiff is barred from recovery in that all products produced by  
12 Defendant were in conformity with the existing state-of-the-art and, as a result, those  
13 products were not defective in any manner.

14 TWENTY-THIRD AFFIRMATIVE DEFENSE

15 Defendant did not and does not have a substantial percentage of the  
16 market for the asbestos-containing products which allegedly caused Plaintiff's  
17 injuries. As a result, Defendant may not be held liable to Plaintiff based on this  
18 Defendant's alleged percentage share of the applicable market.

19 TWENTY-FOURTH AFFIRMATIVE DEFENSE

20 Defendant denies any and all liability to the extent Plaintiff asserts  
21 Defendant's alleged liability as a successor, successor in business, successor in  
22 product line or a portion thereof, assign, predecessor, predecessor in business,  
23 predecessor in product line or a portion thereof, parent, alter ego, subsidiary, wholly  
24 or partially owned by, or the whole or partial owner of or member in an entity  
25 researching, studying, manufacturing, fabricating, designing, labeling, assembling,  
26 distributing, leasing, buying, offering for sale, selling, inspecting, servicing, installing,  
27 contracting for installation, repairing, marketing, warranting, re-branding,  
28 manufacturing for others, packaging and advertising a certain substance, the generic

1 name of which is asbestos.

2 TWENTY-FIFTH AFFIRMATIVE DEFENSE

3 As a result of the acts, conduct, and omissions of Plaintiff and Plaintiff's  
4 agents, each cause of action alleged in the Complaint has been waived.

5 TWENTY-SIXTH AFFIRMATIVE DEFENSE

6 Plaintiff's tobacco use constitutes an assumption of a known risk, and  
7 said conduct by Plaintiff proximately caused and contributed to the loss, injury or  
8 damages incurred by Plaintiff, if any there were. Any recovery by Plaintiff is therefore  
9 barred or must be proportionately reduced.

10 TWENTY-SEVENTH AFFIRMATIVE DEFENSE

11 Defendant alleges that consumption of tobacco products is negligent  
12 *per se* because it is "inherently unsafe and consumed with the ordinary community  
13 knowledge of its danger," as expressed in Richards v. Owens-Illinois, Inc. (1997)  
14 14 Cal.4th 985, and California Civil Code section 1714.45(a)(1). The said negligence  
15 of Plaintiff proximately caused and contributed to the loss, injury or damages incurred  
16 by Plaintiff, if any there were, and any recovery by Plaintiff is therefore barred or must  
17 be proportionately reduced.

18 TWENTY-EIGHTH AFFIRMATIVE DEFENSE

19 Defendant is informed and believes that Plaintiff named Defendant in  
20 this litigation without reasonable product identification and without a reasonable  
21 investigation. Pursuant to California Code of Civil Procedure section 128.5,  
22 Defendant requests an award of reasonable expenses, including attorney's fees,  
23 incurred by Defendant as a result of Plaintiff's bad faith maintenance of this action.

24 TWENTY-NINTH AFFIRMATIVE DEFENSE

25 The loss, injury or damages incurred by Plaintiff, if any there were, were  
26 proximately caused by an unforeseeable, independent, intervening or superseding  
27 event beyond the control, and unrelated to any conduct of Defendant. Defendant's  
28 actions, if any, were superseded by the negligence, wrongful conduct, and other fault

1 of others.

2 THIRTIETH AFFIRMATIVE DEFENSE

3 Defendant alleges that Plaintiff has failed to join all indispensable and/or  
4 essential parties needed for just adjudication of this action. The action should  
5 therefore be stayed pending joinder of all essential and/or indispensable parties or, in  
6 the alternative, the action should be dismissed.

7 THIRTY-FIRST AFFIRMATIVE DEFENSE

8 Plaintiff has improperly split the causes of action and seeks to maintain  
9 a duplicative lawsuit based on the same facts and circumstances as a lawsuit  
10 previously filed.

11 THIRTY-SECOND AFFIRMATIVE DEFENSE

12 California Civil Code sections 1431.1– 1431.5, known as the Fair  
13 Responsibility Act of 1986, are applicable to the present action and to certain claims  
14 therein. As a result, based upon the principle of comparative fault, the liability, if any,  
15 of Defendant, shall be several only and shall not be joint. Defendant, if liable at all,  
16 shall be liable as to certain claims only for the amount of non-economic damages  
17 allocated to Defendant in direct proportion to Defendant's percentage of fault, if any,  
18 and a separate and several judgment shall be rendered against Defendant for non-  
19 economic damages, if any.

20 THIRTY-THIRD AFFIRMATIVE DEFENSE

21 Plaintiff's Complaint, and each and every cause of action therein based  
22 upon warranty or breach thereof, is barred as a result of Plaintiff's failure to give  
23 notice required under California Commercial Code section 2607(3)(a).

24 THIRTY-FOURTH AFFIRMATIVE DEFENSE

25 If Defendant has purportedly been named or served in this action as a  
26 fictitiously-named defendant, Plaintiff's attempt to do so is invalid in that Plaintiff knew  
27 or should have known of Defendant's identity and of Plaintiff's alleged causes of  
28 action against Defendant at the time of filing of the Complaint.

1                                    THIRTY-FIFTH AFFIRMATIVE DEFENSE

2                    Defendant refers to and incorporates herein by reference each and  
3                    every affirmative defense pleaded by the other parties to this action the extent such  
4                    defenses are not inconsistent with the matters stated herein.

5                                    THIRTY-SIXTH AFFIRMATIVE DEFENSE

6                    Defendant presently has insufficient knowledge or information on which  
7                    to form a belief as to whether it may have additional, as yet unasserted, defenses  
8                    available. Defendant reserves the right to assert additional defenses in the event  
9                    discovery indicates they would be appropriate.

10  
11                    WHEREFORE, Defendant prays:

- 12                    (1)     That Plaintiff take nothing by this Complaint;  
13                    (2)     That judgment be entered in favor of Defendant;  
14                    (3)     For recovery of Defendant's costs of suit;  
15                    (4)     For appropriate credits and off-sets arising out of any payment of  
16                    worker's compensation benefits as alleged above; and;  
17                    (5)     For such other and further relief as the Court deems just and  
18                    proper.

19                    Dated: February 7, 2008

20                                    HASSARD BONNINGTON LLP

21  
22                                    By: /s/ B. Thomas French  
23    B. Thomas French

24                                    Attorneys for Defendant  
25                                    KAISER GYPSUM COMPANY,  
26                                    INC.  
27  
28

**PROOF OF SERVICE**

**CASE NAME:** THOMAS and PATRICIA JORGENSEN v. A.W. CHESTERTON CO., et al.

**COURT:** San Francisco County Superior Court

**CASE NUMBER:** CGC-08-274494

I, the undersigned, hereby certify that I am a citizen of the United States, over the age of eighteen years, and am not a party to the within action. I am employed in the City and County of San Francisco, California, and my business address is Two Embarcadero Center, Suite 1800, San Francisco, California 94111-3993. On the date last written below, following ordinary business practice, I electronically served the following document(s):

**ANSWER OF DEFENDANT KAISER GYPSUM COMPANY, INC. TO UNVERIFIED COMPLAINT FOR DAMAGES -- ASBESTOS**

via LexisNexis File & Serve on the recipients designated on the Transaction Receipt located on the LexisNexis File & Serve website.

I declare under penalty of perjury that the foregoing is true and correct and that this Proof of Service was executed on February 7, 2008, at San Francisco, California.

/s/ Jessica Wertzler  
Jessica Wertzler



# **EXHIBIT 16**

1 David T. Biderman, Bar No. 101577  
2 Brien F. McMahon, Bar No. 66809  
3 **PERKINS COIE LLP**  
4 Four Embarcadero Center, Suite 2400  
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5 Attorneys for Defendant  
6 GEORGIA-PACIFIC LLC,  
f/k/a GEORGIA-PACIFIC CORPORATION

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN FRANCISCO

10  
11 THOMAS JORGENSEN and PATRICIA  
JORGENSEN,

12 Plaintiffs,

13 v.

14 A.W. CHESTERTON COMPANY, et al.,

15 Defendants.  
16

No. CGC-08-274494

**ANSWER OF DEFENDANT GEORGIA-  
PACIFIC LLC TO COMPLAINT**

17 Defendant Georgia-Pacific LLC, f/k/a Georgia-Pacific Corporation ("Georgia-Pacific")  
18 hereby answers the unverified Complaint filed on or about January 3, 2008 ("Complaint") of  
19 plaintiffs, THOMAS JORGENSEN and PATRICIA JORGENSEN ("Plaintiffs"), as follows:

20 **GENERAL DENIAL**

21 Pursuant to California Code of Civil Procedure section 431.30(d), Georgia-Pacific denies  
22 generally and specifically each and every allegation of each cause of action contained in the  
23 Complaint, and further denies that Plaintiffs have sustained injury or damage in the sums alleged,  
24 or in any other sum or sums, or at all, and that Plaintiffs are entitled to any relief as a result of any  
25 act, conduct, or omission of Georgia-Pacific.  
26  
27  
28

1 AS AND FOR ITS AFFIRMATIVE DEFENSES HEREIN, GEORGIA-PACIFIC  
2 ALLEGES AS FOLLOWS:

3 **FIRST AFFIRMATIVE DEFENSE**

4 1. The Complaint, and each purported cause of action therein, fails to state facts  
5 sufficient to constitute a cause of action against Georgia-Pacific.

6 **SECOND AFFIRMATIVE DEFENSE**

7 2. The Complaint, and each purported cause of action therein, is barred, in whole or  
8 in part, by the applicable statutes of limitation and/or repose, including, but not limited to,  
9 California Code of Civil Procedure sections 340 and 340.2.

10 **THIRD AFFIRMATIVE DEFENSE**

11 3. Venue is improper in this Court. Georgia-Pacific reserves its rights to move for  
12 dismissal and/or transfer of the action based on improper and/or inconvenient venue and further  
13 reserves its rights to seek application of the law of the appropriate venue on all issues, including  
14 but not limited to statute of limitations, statute of repose, and punitive damages.

15 **FOURTH AFFIRMATIVE DEFENSE**

16 4. The Complaint, and each purported cause of action therein, is barred, in whole or  
17 in part, by the doctrine of estoppel by virtue of Plaintiffs.

18 **FIFTH AFFIRMATIVE DEFENSE**

19 5. The Complaint, and each purported cause of action therein, is barred, in whole or  
20 in part, by the doctrine of laches by virtue of Plaintiffs.

21 **SIXTH AFFIRMATIVE DEFENSE**

22 6. The Complaint, and each purported cause of action therein, is barred, in whole or  
23 in part, by the doctrine of waiver by virtue of Plaintiffs.

24 **SEVENTH AFFIRMATIVE DEFENSE**

25 7. This Court lacks jurisdiction over the subject matter of Plaintiffs' Complaint.

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27 ///

28 ///

**EIGHTH AFFIRMATIVE DEFENSE**

8. The Complaint, and each purported cause of action therein, is barred, in whole or in part, by Plaintiffs' implied assumption of the risks and dangers, if any, associated with the alleged conditions, conduct, or injuries, with knowledge of such risks and dangers.

**NINTH AFFIRMATIVE DEFENSE**

9. Some or all of the damages claimed by Plaintiffs are not recoverable under applicable law. In the event that there is a finding of damages for Plaintiffs, any award or judgment entered in favor of Plaintiffs must be reduced or offset by the amount of any benefits Plaintiffs received, or is entitled to receive, from any source, under applicable law. In addition, if Plaintiffs have heretofore or should hereafter settle for any of the alleged injuries and damages with any parties, then Georgia-Pacific is entitled to a credit in the amount of said settlements.

**TENTH AFFIRMATIVE DEFENSE**

10. To the extent that Plaintiffs have received payment from any alleged joint tortfeasor in full satisfaction of any of the alleged injuries and/or claims against Georgia-Pacific and/or other alleged joint tortfeasors, the Complaint in each and every count and cause of action alleged therein is barred by the defenses of payment and accord and satisfaction.

**ELEVENTH AFFIRMATIVE DEFENSE**

11. Plaintiffs' damages, if any, were directly and proximately caused, or contributed to, in whole or in part, by the acts and/or omissions and/or fault of other individuals, firms, corporations, or other entities over whom Georgia-Pacific has or had no control or right of control, and for whom it is/was not responsible. Said acts and/or omissions and/or fault intervened between, and/or superseded, the acts and/or omissions and/or fault of Georgia-Pacific, if any. Plaintiffs' recovery against Georgia-Pacific, if any, should therefore be barred or diminished in accordance with applicable law.

**TWELFTH AFFIRMATIVE DEFENSE**

12. Plaintiffs' damages, if any, were directly and proximately caused, or contributed to, by Plaintiffs' own negligence or fault at the times and in the places set forth in the Complaint, or the negligence or other fault of individuals, firms, corporations, or other entities, over whom

1 Georgia-Pacific has or had no control or right of control, and for whom it is/was not responsible  
2 which were in privity with Plaintiffs. Plaintiffs' recovery against Georgia-Pacific, if any, should  
3 therefore be barred or diminished in accordance with applicable law.

4 **THIRTEENTH AFFIRMATIVE DEFENSE**

5 13. The Complaint, and each purported cause of action therein, is barred, in whole or  
6 in part, by Plaintiffs' failure to mitigate damages, if any.

7 **FOURTEENTH AFFIRMATIVE DEFENSE**

8 14. At the times and in the places set forth in the Complaint, any Georgia-Pacific  
9 product in question was not being used in the normal and ordinary way, nor was it being used in a  
10 manner recommended by Georgia-Pacific, nor for the purposes for which it was designed. To the  
11 contrary, any such Georgia-Pacific product was being put to an abnormal use or misuse, and to a  
12 use that was not reasonably foreseeable to Georgia-Pacific. Such abnormal use or misuse was the  
13 sole, direct and proximate cause of Plaintiffs' injuries and damages, if any. Plaintiffs' recovery  
14 against Georgia-Pacific, if any, is therefore barred.

15 **FIFTEENTH AFFIRMATIVE DEFENSE**

16 15. At all times and in all places relevant to the alleged conditions, conduct, or  
17 injuries, Plaintiffs have or should have had notice and knowledge of the risks and dangers, if any,  
18 associated with such conditions, conduct, and injuries, because any such risk or danger was open,  
19 obvious, and apparent to Plaintiffs, and Plaintiffs appreciated the danger or risk, and voluntarily  
20 assumed any such danger or risk.

21 **SIXTEENTH AFFIRMATIVE DEFENSE**

22 16. If Plaintiffs sustained any injury or damage as alleged in the Complaint, said injury  
23 or damage was solely, directly, and proximately caused by conditions, circumstances, and/or  
24 conduct of others, beyond the control of Georgia-Pacific.

25 **SEVENTEENTH AFFIRMATIVE DEFENSE**

26 17. Georgia-Pacific is not liable to Plaintiffs with respect to the injuries alleged in the  
27 Complaint because such injuries, if any, were caused by pure accident in terms of law.

28 ///

1 **EIGHTEENTH AFFIRMATIVE DEFENSE**

2 18. The actions of Georgia-Pacific were in conformity with the state of the medical,  
3 industrial, and scientific arts, so that there was no duty to warn Plaintiffs under the circumstances,  
4 or to the extent such a duty arose, Georgia-Pacific provided adequate warnings, labels, and/or  
5 instructions concerning any Georgia-Pacific product in question. If those warnings, labels, and/or  
6 instructions were not made available or heeded, it is the fault of others and not of Georgia-Pacific.

7 **NINETEENTH AFFIRMATIVE DEFENSE**

8 19. The Complaint, and each purported cause of action therein, is barred, in whole or  
9 in part, because Plaintiffs have failed to join all necessary and indispensable parties.

10 **TWENTIETH AFFIRMATIVE DEFENSE**

11 20. Georgia-Pacific made no express or implied representations or warranties of any  
12 kind to Plaintiffs. To the extent that the alleged representations or warranties were made, they  
13 were made by persons or entities other than Georgia-Pacific, and over whom Georgia-Pacific has  
14 or had no control or right of control.

15 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

16 21. Plaintiffs did not rely upon any representations or warranties made by Georgia-  
17 Pacific. To the extent Plaintiffs relied upon any alleged representations or warranties, such  
18 reliance was unjustified.

19 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

20 22. The Complaint fails to set forth a claim for punitive damages upon which relief  
21 may be granted.

22 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

23 23. To the extent the Complaint asserts a demand for punitive damages, Georgia-  
24 Pacific specifically incorporates by reference any and all standards of limitations regarding the  
25 determination and/or enforceability of punitive damage awards that arose in the decisions of  
26 *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996); *Cooper Industries, Inc. v.*  
27 *Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001); and *State Farm Mutual Automobile*  
28 *Insurance Co. v. Campbell*, 123 S. Ct. 1513 (2003).

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

24. Plaintiffs' claim for punitive damages, if granted, would be excessive and would violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Georgia-Pacific has not received fair notice that it could be subject to punitive damages in this state for the conduct alleged. Georgia-Pacific's conduct was not deliberate, and the damages, if any, to Plaintiffs, were economic. The punitive damages sought by Plaintiffs would be greatly disproportionate to any actual damages.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

25. Plaintiffs' claim for punitive damages would violate the Eighth Amendment to the United States Constitution and Article I, Sections 1 and 17, of the California Constitution because it seeks to impose an excessive fine upon Georgia-Pacific, is penal in nature, and seeks to punish Georgia-Pacific upon vague standards.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

26. Plaintiffs' claim for punitive damages would violate the Equal Protection Clause to the Fourteenth Amendment to the United States Constitution and Article I, Section 7 of the California Constitution because it discriminates against Georgia-Pacific on the basis of wealth and because different amounts can be awarded against two or more defendants for the same act when those defendants differ only in material wealth.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

27. Plaintiffs' claim for punitive damages would violate the Fifth Amendment to the United States Constitution and Article I, Section 15 of the California Constitution because it would expose Georgia-Pacific to multiple punishments and fines for the same act or conduct.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

28. Plaintiffs' claim for punitive damages violates the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution in the absence of an order bifurcating that claim from the issue of liability.

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1                                   **TWENTY-NINTH AFFIRMATIVE DEFENSE**

2           29.     Any award of punitive damages in this case would violate the Separation of  
3 Powers Doctrine since this Court and/or the jury would be usurping the exclusive power of the  
4 legislature to define crimes and establish punishment.

5                                   **THIRTIETH AFFIRMATIVE DEFENSE**

6           30.     Any award of punitive damages in this case would be constitutionally defective as  
7 an ex post facto law prohibited by the California and United States Constitution. The jury, in  
8 making any such punitive award, would effectively be criminalizing conduct after it has occurred  
9 and without appropriate advance notice to Georgia-Pacific that such conduct may subject it to  
10 criminal punishment.

11                                  **THIRTY-FIRST AFFIRMATIVE DEFENSE**

12           31.     The punitive damages sought by Plaintiffs would violate the Due Process Clause  
13 of the Fifth and Fourteenth Amendments to the United States Constitution because Plaintiffs seek  
14 to punish Georgia-Pacific in California for alleged conduct that occurred elsewhere.

15                                  **THIRTY-SECOND AFFIRMATIVE DEFENSE**

16           32.     At no time relevant hereto were Plaintiffs exposed to any asbestos from products  
17 mined, processed, imported, converted, compounded, designed, manufactured, marketed or sold  
18 by Georgia-Pacific.

19                                  **THIRTY-THIRD AFFIRMATIVE DEFENSE**

20           33.     Plaintiffs were not exposed to any asbestos materials through any act or omission  
21 of Georgia-Pacific, or if such exposure occurred, which is denied, such exposure was of such  
22 insufficient quantities, at such infrequent intervals, for such short periods of time, or under such  
23 conditions as to amount to no proximate cause of Plaintiffs' damages, if any, as a matter of law.  
24 Therefore, Georgia-Pacific denies that any of its products or any alleged action or inaction on its  
25 part has damaged or injured Plaintiffs in any manner or at any time.

26                                  **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

27           34.     Plaintiffs' employers were negligent and careless, which negligence and  
28 carelessness were legal and actual causes of, and contributed to, the damages, if any, that



1 Plaintiffs sustained, and which negligence and carelessness are a bar to the recovery by Plaintiffs,  
2 from Georgia-Pacific. Furthermore, Georgia-Pacific is entitled to set off any workers'  
3 compensation benefits and/or veterans' benefits and/or military benefits received or that are to be  
4 received by Plaintiffs, against any judgment that may be rendered in favor of Plaintiffs, against  
5 Georgia-Pacific, or against Georgia-Pacific and any other defendant or defendants.

6 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

7 35. The Fair Responsibility Act of 1986, codified at California Civil Code section  
8 1431.1 et. seq., limits any damages governed thereby, which are awarded to Plaintiffs against  
9 Georgia-Pacific, to that portion of Plaintiffs' non-economic damages, if any, that are attributable  
10 to Georgia-Pacific's percentage of fault or liability, if any.

11 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

12 36. The Complaint, and each purported cause of action therein, is barred, in whole or  
13 in part, by the exclusivity of remedy under the California Workers Compensation Act, California  
14 Labor Code section 3200 et. seq.

15 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

16 37. Plaintiffs' claims are barred or preempted, in whole or in part, by federal law,  
17 statutes, and regulations.

18 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

19 38. Georgia-Pacific neither mined, processed, imported, converted, compounded,  
20 designed, manufactured, marketed nor sold any of the products alleged in the Complaint; thus,  
21 Georgia-Pacific denies that any product or action or inaction on its part caused any alleged  
22 damages to Plaintiffs.

23 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

24 39. Any products manufactured by Georgia-Pacific that incorporated asbestos-  
25 containing materials alleged to have been a cause of, or to have contributed to, any disease  
26 contracted by Plaintiffs, were manufactured in, under, and in conformity with the direction and  
27 control of the United States Government, which at all times material hereto had knowledge  
28

1 superior to that of Georgia-Pacific with respect to the potential hazards of asbestos products;  
2 accordingly, no liability can be imposed upon Georgia-Pacific.

3 **FORTIETH AFFIRMATIVE DEFENSE**

4 40. Any and all "market share," "enterprise," and/or "concert of action" theories of  
5 liability are inapplicable to Georgia-Pacific and/or any of Georgia-Pacific's products in question.

6 **FORTY-FIRST AFFIRMATIVE DEFENSE**

7 41. Third parties over whom Georgia-Pacific has or had no control or right of control,  
8 and for whom it is/was not responsible, altered or modified the Georgia-Pacific product or  
9 products in question, and such alteration or modification was the sole, direct, and proximate cause  
10 of Plaintiffs' damages, if any, thereby barring any and all claims against Georgia-Pacific.

11 **FORTY-SECOND AFFIRMATIVE DEFENSE**

12 42. The plans or designs, method or technique of manufacturing, assembling, testing,  
13 labeling and sale of any Georgia-Pacific product alleged in the Complaint to have caused all or  
14 part of Plaintiffs' alleged damages conformed with the state of the art at the time any such  
15 Georgia-Pacific product was designed, manufactured, assembled, tested, labeled and/or sold by  
16 Georgia-Pacific, pursuant to generally recognized and prevailing standards and in conformance  
17 with the statutes, regulations, and requirements that governed the product or products at the time  
18 of design, manufacture, assembly, testing, labeling, and sale.

19 **FORTY-THIRD AFFIRMATIVE DEFENSE**

20 43. The benefits of the design of any Georgia-Pacific product in question outweigh  
21 any risk associated with said products, if there was actually any risk, which Georgia-Pacific  
22 denies.

23 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

24 44. Georgia-Pacific is not liable for Plaintiffs' injuries, if any, because it did not  
25 exercise the requisite degree of control over the details of Plaintiffs' work.

26 **FORTY-FIFTH AFFIRMATIVE DEFENSE**

27 45. The claims raised in the Complaint against Georgia-Pacific are barred under the  
28 *Privette* doctrine, set forth in *Privette v. Superior Court*, 5 Cal. 4th 689 (1993), and its progeny.

**FORTY-SIXTH AFFIRMATIVE DEFENSE**

46. The Complaint fails to state a claim against Georgia-Pacific under the “peculiar risk” doctrine if Plaintiffs’ alleged injury on Georgia-Pacific’s premises, which Georgia-Pacific expressly denies, arose in the course and scope of his/her employment by an independent contractor.

**FORTY-SEVENTH AFFIRMATIVE DEFENSE**

47. Georgia-Pacific is not liable for Plaintiffs’ injuries, if any, because there was no “dangerous condition” on Georgia-Pacific’s premises that was known to, or should have been known to, Georgia-Pacific.

Georgia-Pacific reserves the right, upon completion of its investigation and discovery, to assert such additional defenses as may be appropriate.

**FORTY-EIGHTH AFFIRMATIVE DEFENSE**

48. California Code of Civil Procedure section 361 is a bar to this action because Plaintiffs’ claims arise in another state and, by the laws of that state, an action cannot be maintained by reason of the lapse of time and as a consequence, cannot be maintained in this state.

**FORTY-NINTH AFFIRMATIVE DEFENSE**

49. Another action is pending or has been adjudicated between Georgia-Pacific and Plaintiffs on the same claims alleged in this action, and therefore, pursuant to California Code of Civil Procedure section 430.10(c), this action is duplicative and vexatious and cannot be maintained.

1 WHEREFORE, Georgia-Pacific prays for judgment against Plaintiffs dismissing the  
2 Complaint and each and every purported cause of action alleged against Georgia-Pacific therein,  
3 and awarding Georgia-Pacific costs, interest, disbursements and such other and/or further relief as  
4 the Court may deem appropriate.

5  
6  
7 DATED: February 7, 2008.

**PERKINS COIE LLP**

8 By: /s/ Brien F. McMahon  
9 Brien F. McMahon  
10 Attorneys for Defendant  
11 GEORGIA-PACIFIC, LLC, f/k/a  
12 GEORGIA-PACIFIC CORPORATION  
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**PROOF OF SERVICE**

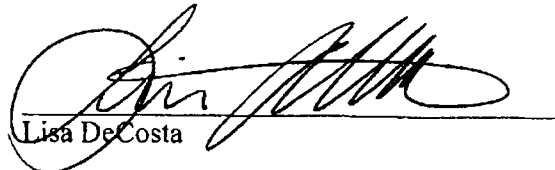
I, Lisa DeCosta, am employed in the County of San Francisco, State of California. I am over the age of 18 years and am not a party to the within action. My business address is Perkins Coie LLP, Four Embarcadero Center, Suite 2400, San Francisco, California 94111. I am familiar with the business practice of Perkins Coie LLP. On February 7, 2008, I caused to be served the following document(s) on the interested parties in this action through the use of the website maintained by Lexis Nexis.

**ANSWER OF DEFENDANT GEORGIA-PACIFIC LLC TO COMPLAINT**

☒ BY ELECTRONIC MAIL: I provided the document(s) listed above to the Lexis Nexis website pursuant to their instructions on that website. If the document(s) is/are provided to Verilaw electronically by 5:00 p.m., then the document will be deemed served on the date that it was provided to Lexis Nexis.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct and was executed in San Francisco, California.

DATED: February 7, 2008.

  
Lisa DeCosta

# **EXHIBIT 17**

SELMAN BREITMAN LLP  
ATTORNEYS AT LAW

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Attorneys for Defendant  
AURORA PUMP COMPANY

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

THOMAS JORGENSEN and PATRICIA JORGENSEN, CASE NO. 274494

Plaintiff,

v.

**ANSWER TO PLAINTIFFS'  
COMPLAINT FOR PERSONAL INJURY  
– ASBESTOS**

ASBESTOS DEFENDANTS (BP),  
Defendants.

DEFENDANT AURORA PUMP COMPANY , ANSWERING PLAINTIFFS'  
UNVERIFIED COMPLAINT ON FILE HEREIN ON ITS OWN BEHALF, AND FOR  
NO OTHER DEFENDANT, ADMITS, DENIES AND ALLEGES AS FOLLOWS:

Whenever "plaintiff" is used in this answer, its reference embraces each  
plaintiff individually as well as all plaintiffs collectively, as is appropriate in context.

Whenever "defendant" is used in this answer, its reference embraces  
defendant AURORA PUMP COMPANY.

Pursuant to California Code of Civil Procedure Section 431.30, this  
defendant files its general denial to said Complaint, and denies each and every, all and  
singular, generally and specifically, the allegations in said Complaint, and each cause of

1 action thereof, and in this connection, this defendant denies that plaintiffs have been  
 2 injured or damaged in the sums set forth, or in any other sums, or otherwise, or at all, or in  
 3 any way whatsoever, by reason of any alleged product of this defendant, or carelessness,  
 4 negligence and/or any alleged act, conduct or omission on the part of this answering  
 5 defendant.

6 THIS DEFENDANT HEREWITH PLEADS AND SETS FORTH  
 7 SEPARATELY AND DISTINCTLY THE FOLLOWING AFFIRMATIVE DEFENSES  
 8 TO EACH AND EVERY CAUSE OF ACTION OF PLAINTIFF'S COMPLAINT AS  
 9 THOUGH PLED SEPARATELY:

10 FIRST AFFIRMATIVE DEFENSE

11 As to the Complaint and as to each and every cause of action thereon, this  
 12 defendant alleges that neither the Complaint nor any purported cause of action alleged by  
 13 the plaintiffs therein states facts sufficient to constitute a cause of action against this  
 14 defendant.

15 SECOND AFFIRMATIVE DEFENSE

16 To the extent the Complaint asserts Defendant's alleged "market share"  
 17 liability, or "enterprise liability", the Complaint fails to state facts sufficient to constitute a  
 18 cause of action against this defendant.

19 THIRD AFFIRMATIVE DEFENSE

20 Neither the Complaint nor any purported cause of action alleged therein  
 21 states facts sufficient to entitle plaintiffs to an award of punitive damages against this  
 22 defendant.

23 FOURTH AFFIRMATIVE DEFENSE

24 The imposition of any punitive damages in this matter would deprive this  
 25 defendant of its property without due process of law under the California Constitution and  
 26 United States Constitution.

27 FIFTH AFFIRMATIVE DEFENSE

28 The imposition of any punitive damages in this matter would violate the

SELMAN BREITMAN LLP  
ATTORNEYS AT LAW



1 California Constitution and the United States Constitution's prohibition against laws  
2 impairing the obligation of contracts.

### 3 SIXTH AFFIRMATIVE DEFENSE

4 The imposition of any punitive damages in this matter would constitute a  
5 criminal fine or penalty and should, therefore, be remitted on the ground that the award  
6 violates the California Constitution and the United States Constitution.

### 7 SEVENTH AFFIRMATIVE DEFENSE

8 Plaintiffs' action, and each alleged cause of action, is barred by all applicable  
9 statutes of limitation including but not limited to those stated in the California Code of  
10 Civil Procedure, sections 335.1, et seq., 338(1), 338 (4), 339(1), 340(1), 340(3), 340.2,  
11 343, 353, 361, 583.210, 583.250, 583.310, 583.410, 583.420, 474, California Commercial  
12 Code section 2725 and any and all applicable statutes of limitations and / or statutes of  
13 repose of the state of plaintiffs' residence if not California.

### 14 EIGHTH AFFIRMATIVE DEFENSE

15 Plaintiffs unreasonably delayed in commencing this action, without any good  
16 cause therefor, and thereby have prejudiced this defendant as a direct and proximate result  
17 of such delay; accordingly, this action is barred by laches.

### 18 NINTH AFFIRMATIVE DEFENSE

19 Plaintiff was negligent in and about matters alleged in the Complaint and in  
20 each alleged cause of action; this negligence proximately caused, in whole or in part, the  
21 damages alleged in the Complaint. In the event plaintiffs are entitled to any damages, the  
22 amount of these damages should be reduced by the comparative fault of plaintiff and any  
23 person whose negligent acts or omissions are imputed to plaintiffs.

### 24 TENTH AFFIRMATIVE DEFENSE

25 Plaintiff knowingly, voluntarily and unreasonably undertook each of the  
26 risks and hazards, if any, referred to in the Complaint and each alleged cause of action, and  
27 this undertaking proximately caused and contributed to any loss, injury or damages  
28 incurred by plaintiffs.

## ELEVENTH AFFIRMATIVE DEFENSE

Any loss, injury or damage incurred by plaintiffs was proximately caused by the negligent or willful acts or omissions of parties whom this defendant neither controlled nor had the right to control, and was not proximately caused by any acts, omissions or other conduct of this defendant.

## TWELFTH AFFIRMATIVE DEFENSE

The products referred to in the Complaint were misused, abused or altered by Plaintiff or by others; the misuse, abuse or alteration was not reasonably foreseeable to this defendant, and proximately caused any loss, injury or damages incurred by plaintiffs.

## THIRTEENTH AFFIRMATIVE DEFENSE

Defendant alleged that its products were manufactured, produced, supplied, sold and distributed in mandatory conformity with specifications promulgated by the United States Government under its war powers, as set forth in the United States Constitution, and that any recovery by plaintiffs on the Complaint on file herein is barred in consequence of the exercise of those sovereign powers.

## FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs failed to exercise due diligence to mitigate his loss, injury or damages; accordingly, the amount of damages to which plaintiffs are entitled, if any, should be reduced by the amount of damages which would have otherwise been mitigated.

## FIFTEENTH AFFIRMATIVE DEFENSE

The Court lacks subject matter jurisdiction over the matters alleged in the Complaint because the Complaint and each alleged cause of action against defendant is barred by the provisions of California Labor Code, section 3601 et. seq. and the similar laws of other states where plaintiffs claim they was injured. Defendant is entitled to a set-off for any such benefits plaintiffs have received.

## SIXTEENTH AFFIRMATIVE DEFENSE

At the time and place of the occurrences and injuries alleged in the Complaint, and all times material herein, the Plaintiff was employed by various employers,

1 the names of which are unknown to this defendant at this time, and working within the  
 2 course and scope of his employment and/or employments. Said employer and/or  
 3 employers and plaintiff were subject to the provisions of the Workers' Compensation Act  
 4 of the State of California and Plaintiff was entitled to receive Workers' Compensation  
 5 benefits from his employers to the extent that certain sums have been paid to or on behalf  
 6 of Plaintiff herein under the applicable provisions of the Labor Code of the State of  
 7 California; that said employer and/or employers, other than this defendant, and each of  
 8 them were negligent and careless in and about the matters referred to in the Complaint and  
 9 that such negligence and carelessness proximately and concurrently contributed to and  
 10 caused the happening of the incidents complained of and injuries and damages of  
 11 plaintiffs, if any there were; any judgment rendered in favor of plaintiffs herein, if any,  
 12 must be reduced by benefits or payments made or to be made to him by his employer or  
 13 employer's compensation carriers.

#### 14 SEVENTEENTH AFFIRMATIVE DEFENSE

15 Defendant alleges that at the time of the injuries alleged in the Complaint,  
 16 Plaintiff's employers were negligent in and about the matters referred to in the Complaint,  
 17 and that such negligence on the part of said employers proximately and concurrently  
 18 contributed to any loss or damage, including non-economic damages, complained of by  
 19 plaintiffs, if any there were; and that this defendant is not liable for said employers'  
 20 proportionate share of non-economic damages.

#### 21 EIGHTEENTH AFFIRMATIVE DEFENSE

22 Defendant alleges that at the time of the injuries alleged in the Complaint,  
 23 parties other than this defendant were negligent in and about the matters referred to in said  
 24 Complaint, and that such negligence on the part of said parties proximately and  
 25 concurrently contributed to any loss or damage, including non-economic damages,  
 26 complained of by plaintiffs, if any there were; and that this defendant herein shall not be  
 27 liable for said parties' proportionate share of non-economic damages.

#### 28 NINETEENTH AFFIRMATIVE DEFENSE

At all times relative to matters in the Complaint, all of Plaintiff's employers and other defendants, other than this defendant, were sophisticated users of asbestos-containing products and the negligence of Plaintiff's employers and other entities in exposing employees to asbestos in a negligent, careless and reckless manner was a superseding intervening cause of plaintiffs' injuries, if there were any.

#### TWENTIETH AFFIRMATIVE DEFENSE

If plaintiffs have received, or in the future may receive, Worker's Compensation benefits from this defendant under the Labor Code of the State of California as a consequence of the alleged industrial injury referred to in the Complaint, and in the event that this defendant is held liable to plaintiff, any award against this defendant must be reduced in the amount of all such benefits received by plaintiff.

#### TWENTY-FIRST AFFIRMATIVE DEFENSE

If plaintiffs have received, or in the future may receive, Workers' Compensation benefits from this defendant under the Labor Code of the State of California as a consequence of the alleged industrial injury referred to in the Complaint, and in the event the plaintiffs are awarded damages against this defendant, this defendant claims a credit against this award to the extent that this defendant is barred from enforcing its rights to reimbursement for Workers' Compensation benefits that plaintiffs have received or may in the future receive.

#### TWENTY-SECOND AFFIRMATIVE DEFENSE

If plaintiffs have received, or in the future may receive Workers' Compensation benefits from this defendant under the Labor Code of the State of California as a consequence of the alleged industrial injury referred to in the Complaint, this defendant demands repayment of any such Workers' Compensation benefits in the event that plaintiffs recovers tort damages as a result of the industrial injury allegedly involved here. Although this defendant denies the validity of plaintiffs' claims, in the event those claims are held valid and not barred by the statute of limitations or otherwise, this defendant asserts that cross-demands for money have existed between plaintiffs and this

1 defendant and the demands are compensated, so far as they equal each other, pursuant to  
2 California Code of Civil Procedure Section 431.70

3 TWENTY-THIRD AFFIRMATIVE DEFENSE

4 At all times and places alleged in the Complaint, plaintiffs were not in privity  
5 of contract with defendant and said lack of privity bars plaintiffs' recovery herein upon any  
6 theory of warranty.

7 TWENTY-FOURTH AFFIRMATIVE DEFENSE

8 Plaintiff is barred from recovery in that any asbestos products which Plaintiff  
9 encountered were in conformity with the existing state-of-the-art applicable to said  
10 products at the time of their manufacture, sale, formulation or distribution, and as a result,  
11 these products were not defective in any manner.

12 TWENTY-FIFTH AFFIRMATIVE DEFENSE

13 Defendant did not and does not have a substantial percentage of the market  
14 for the asbestos-containing products which allegedly caused Plaintiff's injuries. Therefore,  
15 this defendant may not be held liable to plaintiffs based on these this defendant's alleged  
16 percentage share of the applicable market.

17  
18 TWENTY-SIXTH AFFIRMATIVE DEFENSE

19 Defendant denies any and all liability to the extent that plaintiffs assert  
20 defendant's alleged liability as a successor, successor in business, successor in product line  
21 or a portion thereof, assignee, predecessor, predecessor in business, predecessor in product  
22 line or a portion thereof, assignor, parent, alter ego, subsidiary, wholly or partially owned  
23 by, or the whole or partial owner of or member in or as an entity related in any way by  
24 ownership or membership, to any entity researching, studying, manufacturing, fabricating,  
25 designing, labeling assembling, distributing, leasing, buying, offering for sale, selling,  
26 inspecting, servicing, installing, contracting or installation, repairing, marketing,  
27 warranting, rebranding, manufacturing for others, packaging and advertising a certain  
28 substance, the generic name of which is asbestos.

## TWENTY-SEVENTH AFFIRMATIVE DEFENSE

If plaintiffs' claims were already litigated and/or resolved in any prior action, claims facility or bankruptcy proceeding, plaintiff's claims are barred based on the primary right and res judicata doctrines which prohibit splitting a single cause of action into successive suits and seeking new recovery for injuries for which the plaintiffs have been previously compensated by alleged joint tortfeasors.

## TWENTY-EIGHTH AFFIRMATIVE DEFENSE

This answering defendant made no warranties of any kind, express or implied, to plaintiffs herein, nor was Plaintiff's exposure to and/or use of any asbestos products, or the injuries which allegedly resulted therefrom, foreseeable. Further, there was and is no privity or other relationship between plaintiffs and this answering defendant upon which a claim of implied warranty may be based.

## TWENTY-NINTH AFFIRMATIVE DEFENSE

Plaintiffs have waived whatever right they might otherwise have had to claim a breach of warranty in that plaintiffs failed to notify this answering defendant of any alleged breach of express or implied warranty and/or of alleged effects in the products allegedly containing asbestos associated with this answering defendant within a reasonable time after plaintiffs had discovered or should have discovered any defect or nonconformity, if any existed, thereby prejudicing this answering defendant from being able to fully investigate and defend the allegations made against it in the Complaint.

## THIRTIETH AFFIRMATIVE DEFENSE

The Complaint, and each cause of action thereof, is barred by the California Code of Civil Procedure section 389 in that plaintiffs have failed to join as a party to this action parties in whose absence complete relief cannot be accorded among those parties already subject to this action without defendant being exposed to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations.

## THIRTY-FIRST AFFIRMATIVE DEFENSE

Plaintiff knew, or in the exercise of ordinary care should have known, of the

1 risks and hazards involved in the undertaking in which he was engaged but nevertheless,  
 2 and knowing these things, did freely and voluntarily and unreasonably consent to assume  
 3 the risks and hazards incident to said operations, acts and conduct at the time and place  
 4 mentioned in said complaint, and this undertaking proximately caused and contributed to  
 5 any loss, injury or damages incurred by plaintiffs, if any.

#### 6 7 THIRTY-SECOND AFFIRMATIVE DEFENSE

8 At the time of the injuries alleged in the Complaint, parties other than this  
 9 defendant were negligent in and about the matters referred to in said Complaint, and such  
 10 negligence on the part of said parties proximately and concurrently contributed to any loss  
 11 or damage, including non-economic damages, complained of by plaintiffs, if there were  
 12 any. This defendant shall not be liable for said parties' proportionate share of damages.

#### 13 THIRTY-THIRD AFFIRMATIVE DEFENSE

14 Plaintiffs failed to exercise due diligence to mitigate their loss, injury or  
 15 damages; accordingly, the amount of damages to which plaintiff is entitled, if any, should  
 16 be reduced by the amount of damages which would have otherwise been mitigated and  
 17 plaintiffs are barred from any recovery of any injury or damages suffered thereby.

#### 18 THIRTY-FOURTH AFFIRMATIVE DEFENSE

19 This defendant alleges it had no control over any work performed by others,  
 20 including the Plaintiff, employers and entities other than this defendant, and, therefore, has  
 21 no responsibility for the claimed damages.

#### 22 THIRTY-FIFTH AFFIRMATIVE DEFENSE

23 This defendant alleges that the peculiar risk doctrine is inapplicable and that  
 24 liability cannot attach, therefore, based upon its use.

#### 25 THIRTY-SIXTH AFFIRMATIVE DEFENSE

26 Plaintiffs have waived and are estopped from asserting any claims against  
 27 defendant by reason of Plaintiff's approval and consent to the risk of the matters causing  
 28 the damages, if any, of her acknowledgement of, acquiescence in and consent to the



1 alleged acts or omissions, if any, of this defendant.

2 THIRTY-SEVENTH AFFIRMATIVE DEFENSE

3 The instant action is barred pursuant to the holdings enunciated by the  
 4 California Supreme Court in Privette v. Superior Court (1993) 5 Cal.4th 689; Toland v.  
 5 Sunland Housing Group, Inc. (1998) 18 Cal.4th 253; Hooker v. Department of  
 6 Transportation (2002) 27 Cal.4th 198; McKown v. Wal-Mary Stores, Inc. (2002) 27  
 7 Cal.4th 219, and by the California Courts of Appeal in Grahm v. Tosco Corp. (1997) 58  
 8 Cal.App.4th 1373, and all other applicable decisional authority.

9 THIRTY-EIGHTH AFFIRMATIVE DEFENSE

10 Plaintiffs' claims against Defendant are barred by the Governmental  
 11 Immunity Doctrine.

12 THIRTY-NINTH AFFIRMATIVE DEFENSE

13 The Court lacks personal jurisdiction over the matters alleged in the  
 14 Complaint because the Complaint and each alleged cause of action against defendant is  
 15 barred by the provisions of California Labor Code, section 3601 et. seq. and the similar  
 16 laws of other states where plaintiffs claim they was injured. Defendant is entitled to a set-  
 17 off for any such benefits plaintiffs have received.

18 FORTIETH AFFIRMATIVE DEFENSE

19 As a fortieth separate and distinct affirmative defense to the entire  
 20 Complaint, and each cause of action thereof, Defendant alleges that California Code §§  
 21 1431.1-1431.5, known as the Fair Responsibility Act of 1986, is applicable to the present  
 22 action and to certain claims therein, and based upon the principle of comparative fault, the  
 23 liability, if any, of Defendant, shall be several only and shall not be joint. Defendant, if  
 24 liable at all, shall be liable as to certain claims only for the amount of non-economic  
 25 damages allocated to Defendant, if any, in direct proportion to Defendant's percentage of  
 26 fault, if any, and a separate and several judgment shall be rendered against Defendant for  
 27 non-economic damages, if any.

28 FORTY-FIRST AFFIRMATIVE DEFENSE



1 As a forty-first separate and distinct affirmative defense to the entire  
 2 Complaint, and each cause of action thereof, Defendant alleges that Plaintiffs cannot prove  
 3 any facts showing that the conduct of Defendant was the proximate cause of any alleged  
 4 injuries or damages suffered by Plaintiffs as alleged in the Complaint.

#### 5 FORTY-SECOND AFFIRMATIVE DEFENSE

6 As a forty-second separate and distinct affirmative defense to the entire  
 7 Complaint, and each cause of action thereof, Defendant alleges that at all times relevant,  
 8 Defendant's acts and omissions were in conformity with all government statutes and  
 9 regulations and all industry standards based upon the state of knowledge existing at the  
 10 time of the acts or omissions.

#### 11 FORTY-THIRD AFFIRMATIVE DEFENSE

12 As a forty-third separate and distinct affirmative defense to the entire  
 13 Complaint, and each cause of action thereof, Defendant alleges that it presently has  
 14 insufficient knowledge or information on which to form a belief as to whether it may have  
 15 additional, as yet unasserted defenses available. Defendant reserves the right to assert  
 16 additional defenses in the event discovery indicates they would be appropriate.

#### 17 FORTY-FOURTH AFFIRMATIVE DEFENSE

18 As a forty-fourth separate and distinct affirmative defense to the entire  
 19 Complaint, and each cause of action thereof, Defendant alleges that Plaintiffs have failed  
 20 to name indispensable parties to their cause of action.

#### 21 FORTY-FIFTH AFFIRMATIVE DEFENSE

22 As a forty-fifth separate and distinct affirmative defense to the entire  
 23 Complaint, and each cause of action thereof, Defendant refers to and incorporates herein  
 24 by reference each and every affirmative defense pleaded by the other parties to this action  
 25 to the extent that such defenses are not inconsistent with the matters stated herein.

26  
 27 WHEREFORE, this answering defendant prays as follows:

28 1. That plaintiffs take nothing by their Complaint;

- 1                   2.     That judgment be entered in favor of this defendant;
- 2                   3.     For recovery of defendant's costs of suit;
- 3                   4.     For appropriate credits and set-offs arising from of any payment of
- 4     Workers' Compensation benefits as alleged above; and
- 5
- 6                   5.     For such other and further relief as the Court deems just and proper.

7     DATED: February 5, 2008             SELMAN BREITMAN LLP

8  
9                                     By /S/ W. JOSEPH GUNTER

10                                    MARK A. LOVE

11                                    W. JOSEPH GUNTER

12                                    Attorneys for Defendant AURORA PUMP COMPANY

SELMAN BREITMAN LLP  
ATTORNEYS AT LAW

**ROOF OF SERVICE BY ELECTRONIC SUBMISSION**

*Thomas Jorgensen, et al. v. A.W. Chesterton, et al.*  
San Francisco Superior Court Case No. 274494

Def. AURORA PUMP COMPANY

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco, State of California. I am over the age of 18 years and am not a party to the within action; my business address is 33 New Montgomery, Sixth Floor, San Francisco, CA 94105. On February 6, 2008, I electronically served the following document(s) via LexisNexis File & Serve described as:

**ANSWER TO COMPLAINT**

on the recipients designated on the Transaction Receipt located on the LexisNexis File & Serve website.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 6, 2008, at San Francisco, California.



EVANGELINE CONANAN

SELMAN BREITMAN LLP  
ATTORNEYS AT LAW

**PROOF OF SERVICE**

Thomas Jorgenson, et al v. A.W. Chesterton Co., et al.  
San Francisco Superior Court Case No. 274494  
Defendant: AURORA PUMP COMPANY

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco, State of California. I am over the age of 18 years and am not a party to the within action; my business address is 33 New Montgomery, Sixth Floor, San Francisco, CA 94105. On February 6, 2008, I electronically served the following document(s) via LexisNexis File & Serve described as:

**ANSWER TO COMPLAINT**

on the recipients designated on the Transaction Receipt located on the LexisNexis File & Serve website.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 6, 2008, at San Francisco, California.

  
\_\_\_\_\_  
EVANGELINE CONANAN

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Attorneys for Defendant  
CROWLEY MARITIME CORPORATION

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

THOMAS JORGENSEN AND PATRICIA  
JORGENSEN

Plaintiffs,

vs.

A.W. CHESTERTON COMPANY, et al.

Defendants.

Case No.: CV 08 0903 EMC

**EXHIBIT A18 – A27 TO NOTICE OF  
REMOVAL OF ACTION UNDER 28  
U.S.C. §1442(a)(1)  
(FEDERAL OFFICER)**

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# **EXHIBIT 18**

1 MARK A. LOVE (SBN 162028)  
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6 Attorneys for Defendant  
7 AURORA PUMP COMPANY

8  
9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO - UNLIMITED JURISDICTION

11 THOMAS JORGENSEN and PATRICIA  
12 JORGENSEN,

CASE NO. 274494

**DEMAND FOR JURY TRIAL**

Plaintiff,

13  
14 v.

15 ASBESTOS DEFENDANTS (BP),

16 Defendants.

17  
18  
19 Defendant AURORA PUMP COMPANY hereby requests a jury trial in the above-  
20 captioned matter.

21  
22 DATED: February 6, 2008

SELMAN BREITMAN LLP

23  
24 By: /S/ W. JOSEPH GUNTER  
MARK A. LOVE  
W. JOSEPH GUNTER  
25 Attorneys for Defendant  
26 AURORA PUMP COMPANY  
27  
28

**PROOF OF SERVICE BY ELECTRONIC SUBMISSION**

*Thomas Jorgensen, et al. v. A.W. Chesterton, et al.*  
San Francisco Superior Court Case No. 274494  
Def. AURORA PUMP COMPANY

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco, State of California. I am over the age of 18 years and am not a party to the within action; my business address is 33 New Montgomery, Sixth Floor, San Francisco, CA 94105. On February 6, 2008, I electronically served the following document(s) via LexisNexis File & Serve described as:

**DEMAND FOR JURY TRIAL**

on the recipients designated on the Transaction Receipt located on the LexisNexis File & Serve website.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 6, 2008, at San Francisco, California.



EVANGELINE CONANAN



# **EXHIBIT 19**

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7 Attorneys for Defendant  
8 DOWMAN PRODUCTS, INC.

9 **SUPERIOR COURT OF CALIFORNIA**  
10 **COUNTY OF SAN FRANCISCO (UNLIMITED JURISDICTION)**

11 THOMAS JORGENSEN and PATRICIA  
12 JORGENSEN,

13 Plaintiffs,

14 vs.

15 A. W. CHESTERON COMPANY, et al.,

16 Defendants.

) Case No. CGC-08-274494

) **ANSWER OF DEFENDANT DOWMAN**  
) **PRODUCTS, INC. TO PLAINTIFFS'**  
) **COMPLAINT FOR DAMAGES**

) (ASBESTOS)

17 Defendant DOWMAN PRODUCTS, INC. (hereafter "Defendant"), in answering the  
18 Plaintiffs' unverified complaint for itself alone, and severing itself from all others, admits, denies  
19 and alleges as follows:

20 1. Pursuant to California Code of Civil Procedure, Section 431.30, Defendant denies,  
21 both generally and specifically, each, every, and all allegations of each and every purported cause  
22 of action or count of Plaintiffs' complaint, denying specifically that Plaintiffs have been, are, or will  
23 be injured or damaged in the manner or sum alleged, or in any other manner or sums at all, and  
24 further denying that Defendant was negligent in any manner, that the alleged product was defective  
25 in any way, or that the alleged defect was the proximate cause of the Plaintiffs' claimed damages or  
26 injuries.

27 DEFENDANT HEREIN ALLEGES AND SETS FORTH SEPARATELY AND  
28 DISTINCTLY THE FOLLOWING AFFIRMATIVE DEFENSES TO EACH AND EVERY

-1-

DOWMAN PRODUCTS, INC.'S ANSWER TO PLAINTIFFS' COMPLAINT

1 CAUSE OF ACTION AS ALLEGED IN PLAINTIFFS' COMPLAINT AS THOUGH PLEADED  
2 SEPARATELY TO EACH AND EVERY SUCH CAUSE OF ACTION:

3 **FIRST AFFIRMATIVE DEFENSE**

4 2. The complaint and each and every purported cause of action or count thereof fails to  
5 state facts sufficient to constitute a cause or causes of action against Defendant.

6 **SECOND AFFIRMATIVE DEFENSE**

7 3. Defendant is informed and believes and thereon alleges that the acts, injuries, and  
8 damages alleged in the complaint occurred and were proximately caused by either the sole  
9 negligence or fault of Plaintiffs, which sole negligence or fault bars Plaintiffs' recovery, or were  
10 contributed to by Plaintiffs' negligence or fault. Plaintiffs' recovery, if any, should be reduced by  
11 an amount proportionate to the amount by which Plaintiffs' negligence or fault contributed to the  
12 happening of the alleged incident and/or alleged injury.

13 **THIRD AFFIRMATIVE DEFENSE**

14 4. Defendant is informed and believes and thereon alleges that the negligence,  
15 carelessness and other acts or omissions of other Defendants in this lawsuit, as well as other  
16 persons and entities not parties to this lawsuit, proximately caused or contributed to Plaintiffs'  
17 injuries and damages, if any. The negligence, carelessness, and other acts or omissions of the other  
18 Defendants in this lawsuit and other persons and entities not parties to this lawsuit account for one  
19 hundred percent (100%) of the causal or contributing factors relating to Plaintiffs' injuries and  
20 damages, if any, and/or constitute supervening and/or intervening causes of Plaintiffs' injuries and  
21 damages, if any.

22 **FOURTH AFFIRMATIVE DEFENSE**

23 5. Defendant is informed and believes and thereon alleges that the accident, injury, and  
24 damages alleged in Plaintiffs' complaint occurred and were proximately caused by either the sole  
25 negligence of Plaintiff's employer or co employees, which sole negligence bars Plaintiffs' recovery,  
26 or were contributed to by the negligence of Plaintiff's employer or co employees. Plaintiffs'  
27 recovery, if any, must be reduced by an amount proportionate to the amount by which the  
28 negligence of Plaintiff's employer and/or the negligence of Plaintiff's co employees contributed to

1 the happening of the alleged accident and the alleged injuries.

2 **FIFTH AFFIRMATIVE DEFENSE**

3 6. Defendant is informed and believes and thereon alleges that while at all times  
4 denying any liability whatsoever to Plaintiffs, any alleged liability or responsibility of Defendant is  
5 small in proportion to the alleged liability and responsibility of other persons or entities, including  
6 other persons and entities who are parties herein, and Plaintiffs should be limited to seeking  
7 recovery from Defendant for the proportion in which it is allegedly liable or responsible, all such  
8 alleged liability and responsibility being expressly denied.

9 **SIXTH AFFIRMATIVE DEFENSE**

10 7. Defendant is informed and believes and thereon alleges that at the time the alleged  
11 operations, acts and conduct occurred, Plaintiff was acting within the course and scope of  
12 employment and was entitled to receive, did receive and will continue to receive workers'  
13 compensation benefits. Plaintiff's employers failed to provide the Plaintiff with a safe place in  
14 which to work and Plaintiff's employers' negligence, carelessness and other acts and omissions  
15 proximately caused the injuries and damages claimed. Therefore, said employers and their  
16 workers' compensation carriers are barred from any recovery by lien or otherwise herein and  
17 Defendant is entitled to set off any such benefits Plaintiffs have received against any judgment  
18 rendered in favor of Plaintiffs.

19 **SEVENTH AFFIRMATIVE DEFENSE**

20 8. Defendant is informed and believes and thereon alleges that Plaintiff knew of the  
21 risks and dangers inherent to Plaintiff's conduct, and with full knowledge of those risks and dangers  
22 and with an appreciation for the magnitude of the risks and dangers did voluntarily assume the risks  
23 and injuries and damages, if any, sustained thereby. Plaintiff's assumption of risk bars or  
24 proportionately reduces any recovery by Plaintiffs.

25 **EIGHTH AFFIRMATIVE DEFENSE**

26 9. Plaintiffs have failed to make reasonable efforts to mitigate their injuries and/or  
27 damages, if any.

28 ///

**NINTH AFFIRMATIVE DEFENSE**

10. The complaint and each and every cause of action are barred by the applicable Statute of Limitations, including, but not limited to, Code of Civil Procedure, Sections 335.1, 338, 339, 340.2 and 343.

**TENTH AFFIRMATIVE DEFENSE**

11. Plaintiffs' action is barred by the provisions of Labor Code, Section 3600, et seq.

**ELEVENTH AFFIRMATIVE DEFENSE**

12. Plaintiffs have waived and are estopped from asserting any claim against Defendant by reason of Plaintiffs' approval and consent to the risk of the matters causing the damages, if any, and their acknowledgement of, acquiescence in and consent to the alleged acts or omissions, if any, of Defendant.

**TWELFTH AFFIRMATIVE DEFENSE**

13. This action is barred by laches as Plaintiffs unreasonably delayed in the bringing of this action and thereby prejudiced the rights of Defendant.

**THIRTEENTH AFFIRMATIVE DEFENSE**

14. Defendant alleges that Defendant manufactured and produced its product(s) in full compliance with governmental regulations and/or specifications.

**FOURTEENTH AFFIRMATIVE DEFENSE**

15. Plaintiffs are barred from asserting any claim based on breach of warranty against Defendant by reason of failure to fulfill the conditions of warranties alleged in the complaint in the event such alleged warranties are proved at trial.

**FIFTEENTH AFFIRMATIVE DEFENSE**

16. Defendant alleges that Plaintiffs have waived whatever rights Plaintiffs might otherwise have had for breach of warranty in that Plaintiffs failed to notify Defendant of any alleged breach of warranty, express or implied, and/or of any alleged defects in any product(s) manufactured or marketed by Defendant within a reasonable time after Plaintiffs discovered, and/or should have discovered, any defect or nonconformity, if any existed, thereby prejudicing Defendant from being able to fully investigate and defend the allegations contained in Plaintiffs' complaint.

1 **SIXTEENTH AFFIRMATIVE DEFENSE**

2 17. Defendant alleges that Plaintiffs are now estopped from claiming that any product(s)  
3 manufactured or marketed by Defendant were in any way defective or failed to conform to any  
4 alleged warranties in that Plaintiffs failed to notify Defendant of any defect or nonconformity in  
5 any product(s) within a reasonable time after Plaintiffs discovered, or should have discovered, any  
6 defect or nonconformity, if any existed.

7 **SEVENTEENTH AFFIRMATIVE DEFENSE**

8 18. Defendant alleges that Plaintiffs were not in privity of contract with Defendant and  
9 that such lack of privity bars Plaintiffs' recovery herein upon any theory of warranty.

10 **EIGHTEENTH AFFIRMATIVE DEFENSE**

11 19. Defendant is informed and believes and thereon alleges that Plaintiff and/or other  
12 persons, without Defendant's knowledge and/or approval, redesigned, modified, altered and/or used  
13 Defendant's product(s) contrary to the instructions and warnings and the customs and practices of  
14 the industry so as to substantially change the character of Defendant's product(s). Defendant further  
15 alleges that if the product(s) of Defendant were defective in any way, which defectiveness is  
16 specifically denied, such defectiveness resulted solely from the redesign, modification, alteration,  
17 use or other changes therein and not from any act or omission of Defendant. Therefore, the defect,  
18 if any, so created by Plaintiff and/or other persons or parties, as the case may be, was the sole and  
19 proximate cause of the injuries and/or damages, if any, alleged by Plaintiffs.

20 **NINETEENTH AFFIRMATIVE DEFENSE**

21 20. Defendant is informed and believes and thereon alleges that the accident, injury and  
22 damages alleged in Plaintiffs' complaint were solely and proximately caused by Plaintiff's misuse  
23 of the product(s). Defendant could not have reasonably foreseen this misuse and Plaintiff's misuse  
24 thereof bars recovery against Defendant.

25 **TWENTIETH AFFIRMATIVE DEFENSE**

26 21. Defendant alleges that any injuries or damages alleged by Plaintiffs, the existence  
27 thereof being expressly denied by Defendant, are the direct and proximate result of Plaintiff's  
28 particular, idiosyncratic, peculiar or unforeseeable susceptibility to the alleged product(s)

1 manufactured by Defendant, which reaction was not the result of any conduct or omission of  
2 Defendant nor the result of any defect in any product(s) manufactured by Defendant.

3 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

4 22. Defendant alleges that in light of all relevant factors, on balance with the benefits of  
5 the design of any product(s) alleged to have caused any injuries to Plaintiffs, if any, outweigh the  
6 risks and danger, if any, inherent in the said design of any said product(s).

7 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

8 23. Defendant alleges that if Plaintiffs were injured by any product(s) manufactured or  
9 distributed by Defendant, Defendant, irrespective, did not breach any duty to Plaintiffs and is not  
10 liable for any injuries or for Plaintiffs' claimed damages as the product(s) when manufactured and  
11 distributed conformed to the then current state-of-the-art specifications and because the then  
12 current state-of-the-art medical, scientific and industrial knowledge, art and practice were such that  
13 Defendant did not and could not know that the product(s) might pose a risk of harm in normal and  
14 foreseeable use.

15 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

16 24. Defendant alleges that if Plaintiffs were injured by any product(s) manufactured by  
17 Defendant, such product(s) were intended and sold in bulk to a knowledgeable and sophisticated  
18 distributor or user over whom Defendant had no control and who was fully informed as to the risks  
19 and dangers, if any, associated with the product(s) and the precautions, if any, required to avoid any  
20 risks or dangers, if any.

21 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

22 25. Defendant alleges that if Plaintiffs were injured by any product(s) manufactured by  
23 Defendant, said product(s) were accompanied by good and sufficient labeling when they left the  
24 custody, possession and control of Defendant which gave conspicuous, reasonable and adequate  
25 warnings and directions to the users of the product(s) concerning the purpose for which, and  
26 manner in which, the product(s) were to be used and concerning the risks and dangers, if any,  
27 attendant to said use. Defendant alleges that as a result of the warnings and directions, Defendant  
28 fulfilled whatever duty, if any, that is owed to Plaintiffs. If Plaintiffs were injured by any

1 product(s), the injuries were proximately caused by the use of the product(s) in disregard of the  
2 warnings and directions, which was not reasonably foreseeable to Defendant.

3 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

4 26. Defendant denies any and all liability to the extent that Plaintiffs may assert  
5 Defendant's alleged liability as a successor, successor in business, successor in product line or a  
6 portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a  
7 portion thereof, parent, alter ego, subsidiary, wholly or partially owned by, or the whole or partial  
8 owner or member in an entity in which there has been research, study, manufacturing, fabricating,  
9 designing, labeling, assembling, distributing, leasing, buying, offering for sale, selling, inspecting,  
10 servicing, installing, contracting for installation, repairing, marketing, warranting, rebranding,  
11 manufacturing for others, packaging and advertising of any and all of the products, as alleged in  
12 Plaintiffs' complaint.

13 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

14 27. Defendant alleges that plaintiffs herein lack legal capacity and standing to sue; are  
15 not real parties in interest or persons with superior right to make the claims contained in this  
16 complaint and are thereby precluded from any recovery whatsoever. Additionally, to the extent  
17 they lack standing or proper appointment to bring the claims they are asserting, any action taken  
18 in this matter with regard to their claim(s) is voidable. Defendant further contends that any  
19 declaration filed by any person asserting a survival claim contains expert opinions and  
20 conclusions that are not supported and that the declarant is not qualified to make.

21 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

22 28. Defendant alleges that Plaintiffs did not reasonably rely upon any act, omission or  
23 representation of Defendant.

24 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

25 29. Defendant alleges that Plaintiffs' complaint and each and every cause of action fail  
26 to state facts sufficient to constitute a cause or causes of action for punitive damages against  
27 Defendant.  
28



**TWENTY-NINTH AFFIRMATIVE DEFENSE**

30. Defendant alleges that insofar as the instant complaint is an attempt to recover punitive or exemplary damages from Defendant, it violates the following United States Constitutional and California State Constitutional principles:

- a. Excessive fines clause of the United States Constitution, Eighth Amendment and Fourteenth Amendment;
- b. The contract clause, Article I, Section 10, clause 1, and the Fourteenth Amendment of the United States Constitution;
- c. The due process clause of the United States Constitution, Fourteenth Amendment;
- d. The equal protection clause of the United States Constitution;
- e. The California Constitution due process and equal protection clauses, Article 1, Section 7(a);
- f. The California Constitution excessive fines clause, Article 1, Section 17.

WHEREFORE, Defendant DOWMAN PRODUCTS, INC. prays for judgment as follows:

1. That Plaintiffs take nothing from Defendant by virtue of the complaint herein;
2. That Defendant be awarded costs of suit and attorneys' fees herein; and
3. That Defendant be granted such other and further relief as the Court may deem just

and proper.

Dated: February 6, 2008

WALSWORTH, FRANKLIN, BEVINS & McCALL, LLP

By: /S/ MICHAEL T. MCCALL  
MICHAEL T. MCCALL  
Attorneys for Defendant  
DOWMAN PRODUCTS, INC.

**PROOF OF SERVICE**

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action. My business address is 601 Montgomery Street, Ninth Floor, San Francisco, California 94111-2612.

On February 6, 2008, I served the within document(s) described as:

ANSWER OF DEFENDANT DOWMAN PRODUCTS, INC. TO PLAINTIFFS' COMPLAINT FOR DAMAGES

on the interested parties in this action as stated below:

LEVINS SIMES KAISER & GORNICK LLP  
44 Montgomery Street  
36th Floor  
San Francisco, CA 94104

☒ (BY ELECTRONIC MAIL) I provided the document(s) listed above electronically to the Lexis Nexis website pursuant to their instructions on that website. If the document is provided to Lexis Nexis electronically by 5:00 p.m., then the document will be deemed served on the date that it was provided to Lexis Nexis.

Executed on February 6, 2008, at San Francisco, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Laura El-Ali  
(Type or print name)

/S/ LAURA EL-ALI  
(Signature)

# **EXHIBIT 20**

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6 Attorneys for Defendant  
T H AGRICULTURE & NUTRITION, LLC  
7 (sued individually and as Successor-In  
Interest to Thompson-Hayward Chemical Co.)  
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SAN FRANCISCO

11 THOMAS JORGENSEN and PATRICIA  
JORGENSEN,

12 Plaintiffs,

13 v.

14 A.W. Chesterton Company., et al.

15 Defendants.  
16

CASE NO. CGC-08-274494

**ANSWER OF DEFENDANT T H  
AGRICULTURE & NUTRITION, LLC TO  
PLAINTIFFS' COMPLAINT FOR DAMAGES**

Negligence, Strict Liability, Punitive Damages  
Loss of Consortium (Asbestos)

Complaint Filed: January 3, 2008  
Trial Date: None Set

17 Defendant T H AGRICULTURE & NUTRITION, LLC (sued as TH Agriculture & Nutrition,  
18 LLC (sued individually and as successor-in-interest to Thompson Hayward Chemical Co.) ("THAN  
19 or "defendant"), for itself and for no other defendant, answers plaintiffs' first amended complaint on  
20 file herein as follows:

21 **GENERAL DENIAL**

22 1. Pursuant to Code of Civil Procedure § 431.30, THAN denies generally and  
23 specifically each and every allegation of plaintiffs' unverified complaint.

24 2. THAN denies generally and specifically that any conduct, act or omission of THAN is  
25 grounds for liability to the plaintiffs.

26 3. THAN denies generally and specifically that any conduct, act or omission of THAN,  
27 or of any person or entity for whose acts or omissions THAN is legally responsible, proximately  
28 caused or contributed in whole or in part to the alleged injuries and damages, if any, to plaintiffs.

1           4.     THAN denies generally and specifically that plaintiffs have been damaged in any  
2 manner whatsoever.

3           5.     By alleging the Separate and Affirmative Defenses set forth below, THAN is not  
4 agreeing or conceding that it has the burden of proof on any of the issues raised in these defenses.

5                   **FIRST SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**

6                           **(Statute of Limitations)**

7           6.     The complaint and each and every cause of action therein, is barred by the applicable  
8 statute of limitations, including without limitation, California Code of Civil Procedure §§ 340.2  
9 subdivisions (a)(1), (a)(2) and (b), 318, 337.1, 337.15, 338(a), 338(d), 339, 340, 340(3), 342, 343,  
10 361 and California Commercial Code Sections 1201(25)(c), 2510, 2513(1) and (3), 2601, 2605(1)(a)  
11 and (b), 2607, 2607(3)(a), 2715(2)(a), 2719(3) and 2725.

12                   **SECOND SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**

13                           **(Altered Product)**

14           7.     The product involved was materially altered or changed by a party or parties other  
15 than, and without the permission of, this answering defendant, its employees, servants, or other  
16 agents, and such alteration or change creating the alleged defect, if any, was the proximate or legal  
17 cause of plaintiffs' injuries or damages, if any.

18                   **THIRD SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**

19                           **(Assumption of the Risk)**

20           8.     The defect in the product, if any, was known to plaintiffs and/or others who used said  
21 product after full knowledge of said alleged defect; as a result, plaintiffs are barred from recovery  
22 herein, proportionately or totally, in that he/she/they voluntarily encountered a known danger and  
23 thereby assumed the risk of any injury or damage resulting from that injury.

24                   **FOURTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**

25                           **(Breach of Warranty)**

26           9.     Plaintiffs' complaint and each and every cause of action therein based upon warranty  
27 or breach thereof, is barred as a result of failure of plaintiffs and/or others to give notice required  
28 under Commercial Code § 2607(3)(a).

**FIFTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE****(Improper Acts)**

10. The product was improperly maintained and cared for by plaintiffs and/or others, or their employers and/or their agents; such improper maintenance and care created the defects, if any, that was the proximate or legal cause of plaintiffs' injuries and damages, if any; such improper maintenance and care was unforeseeable to this answering defendant; and plaintiffs' claims are thereby reduced by the percentage of all responsibility attributable to plaintiffs and/or others, their employers and/or other agents by virtue of said improper maintenance and care.

**SIXTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE****(Intervening Acts)**

11. The loss, injury, or damage, if any, incurred by plaintiffs were the result of superseding or intervening causes arising from negligent or willful acts or omissions by parties which defendant neither controlled nor had the right to control, and said losses, injuries, or damages were not proximately or legally caused by any act, omission, or other conduct of defendant.

**SEVENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE****(Failure to Mitigate Damages)**

12. Plaintiffs failed to mitigate damages, if any, in that plaintiffs failed to use reasonable diligence in caring for, preventing the aggravation of, and/or accomplishing the healing of injuries, if any.

**EIGHTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE****(Allocation of Damages)**

13. If this defendant is responsible to plaintiffs, which responsibility is expressly denied, this defendant shall be liable to plaintiffs only for the amount of non-economic damages allocated to this defendant in direct proportion to this defendant's percentage of fault, if any.

**NINTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE****(Laches)**

14. Plaintiffs' claims are barred by the doctrine of laches.

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**TENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE****(Government Specifications)**

15. If the products described in the complaint were manufactured or distributed by defendant, they were manufactured or distributed in accordance with specifications and requirements supplied to defendant by persons other than defendant including, but not limited to, the government of the United States of America. Any defect in said products was caused by deficiencies in said mandatory specifications and requirements supplied to defendant, which deficiencies were neither known to defendant nor discoverable by defendant with the exercise of reasonable care.

**ELEVENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE****(Immunity)**

16. THAN is immune from liability for any conduct performed in conformance with government specifications or private contractual specifications pursuant to the doctrine and rules embodied in *Boyle v. United Technologies Corporation*, 487 U.S. 500 (1988), and any other relevant immunity established by statute, regulation, or otherwise.

**TWELFTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE****(No Reasonable Certainty)**

17. Any exposure to defendant's products was so minimal as to be insufficient to establish a reasonable degree of probability that any such product caused any alleged injury, damage, or loss to plaintiffs.

**THIRTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE****(Insufficiency of Service of Process)**

18. The complaint and each purported cause of action contained therein fail to comply with procedural and legal requirements which are conditions precedent to the naming of THAN, service of THAN, and maintenance of this action against THAN. Recovery sought by this complaint is therefore barred.

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**FOURTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE****(Improper Doe)**

19. If defendant has purportedly been named or served in this action as a Doe defendant, such effort by plaintiffs is invalid on the ground that plaintiffs knew or should have known of the identity of the defendant and the plaintiffs' alleged causes of action against defendant at the time of the filing of the complaint.

**FIFTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE****(Contributory Negligence)**

20. Defendant is informed and believes, and upon such information and belief alleges that plaintiffs and/or others were negligent, careless, reckless, and acted unlawfully in the use, control, direction and application of their bodily movements and the equipment, safety devices, and other facilities supplied to them and existing as a part of the environment, and the injuries and damages, if any, were directly and proximately caused and contributed to by his/her/their own negligence.

**SIXTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE****(Misuse of Product)**

21. Defendant is informed and believes and upon such information and belief alleges that plaintiffs and/or others misused the product and used same after knowledge of defect, if any, existing therein.

**SEVENTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE****(Workers' Compensation)**

22. Plaintiffs' and/or others' employer(s) so negligently, carelessly, recklessly, and unlawfully directed, controlled, and supplied plaintiffs and/or others with a working environment, including safety and protective equipment, clothing or the lack thereof, so as to directly and proximately cause and contribute to the injuries, if any exist, and to the extent that any sum or sums have been paid to plaintiffs by said employer, this claim is barred thereby.

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**EIGHTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**

**(Use of Protective Equipment)**

23. Failure of plaintiffs and/or others to use available protective equipment, which failure directly and proximately caused and contributed to all or part of the injuries and damages, if any, and which failure bars the right of the plaintiffs to recover herein for any such injuries or damages.

**NINETEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**

**(Workers' Compensation)**

24. The complaint, and each and every cause of action therein, fails to state facts sufficient to constitute a cause of action against defendant and is barred by the provisions of Labor Code § 3600.

**TWENTIETH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**

**(Workers' Compensation)**

25. The complaint, and each and every cause of action therein, fails to state facts sufficient to constitute a cause of action against defendant and is barred by the provisions of Labor Code § 3601.

**TWENTY-FIRST SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**

**(Workers' Compensation)**

26. The complaint, and each and every cause of action therein, fails to state facts sufficient to constitute a cause of action against defendant and is barred by the provisions of Labor Code § 3602.

**TWENTY-SECOND SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**

**(Failure to State Facts Sufficient to Constitute a Cause of Action)**

27. The complaint, and each and every cause of action therein, fails to state facts sufficient to constitute a cause of action against answering defendant upon which relief can be granted.

**TWENTY-THIRD SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**

**(Punitive Damages)**

28. The statutory authority, including but not limited to California Civil Code § 3294, pursuant to which plaintiffs claim punitive damages, is invalid on its face and/or as applied to this

defendant pursuant to the First, Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States and Article I of the Constitution of the State of California.

**TWENTY-FOURTH SEPARATE AND AFFIRMATIVE DEFENSE**

**(Split Cause of Action)**

29. The instant action is barred by the rule against splitting a cause of action.

**TWENTY-FIFTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**

**(Estoppel)**

30. Plaintiffs are collaterally estopped or barred by the doctrine of res judicata from maintaining this action and/or seeking damages against this answering defendant.

**TWENTY-SIXTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**

**(Settlement)**

31. Defendant is informed and believes and upon that ground alleges that plaintiffs' claims against this answering defendant are barred by the doctrines of settlement, release, compromise and accord and satisfaction.

**TWENTY- SEVENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**

**("Full Faith and Credit" Clause)**

32. Defendant is informed and believes and upon that ground alleges that plaintiffs' claims against this answering defendant are barred by the "Full Faith and Credit" clause of the U.S. Constitution, Article IV, Section 1, and California case law interpreting this provision.

**TWENTY-EIGHTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**

**(Learned Intermediaries)**

33. Plaintiffs' claims based upon this answering defendant's alleged duty to warn are barred because plaintiffs' and/or others' employers are considered learned intermediaries as contemplated by Restatement (Second) of Torts.

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**TWENTY-NINTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE****(Duty to Warn)**

34. Any duty on the part of this defendant to warn plaintiffs and/or others of the risks and dangers of utilization of the product in question, if any such duty exists, was satisfied through the information and warnings provided to plaintiffs' and/or others' employer(s) or defendant's sophisticated customers. Accordingly, defendant is discharged of its duty to warn of the risk of utilizing the subject product, if any such duty existed, by so advising other persons.

**THIRTIETH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE****(Modification of Product)**

35. Any alleged raw materials left the possession and control of defendant, and without its control or approval, such materials were redesigned, modified, altered, incorporated into a finished product, and subjected to treatment which substantially changed their character. The defect in any raw materials, as alleged in the complaint, resulted, if at all, from the redesign, modification, alteration, treatment or other change of the materials after the defendant relinquished possession and control and not from any act or omission of defendant.

**THIRTY-FIRST SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE****(Privity)**

36. Plaintiffs and/or others were not in privity with defendant and, therefore, may not rely upon the theory of any alleged express or implied warranty, or alleged breach thereof.

**THIRTY-SECOND SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE****(Failure to Notify of Breach of Warranty)**

37. Plaintiffs and/or others failed to notify defendant of any breach of warranty within a reasonable time after they discovered or should have discovered any such alleged breach of warranty and are, therefore, barred from any recovery for such claims.

**THIRTY-THIRD SEPARATE AND AFFIRMATIVE DEFENSE****(Implied Warranty)**

38. Defendant has effectively disclaimed all implied warranties of merchantability or fitness for a particular purpose, together with any other express or implied warranties other than those

specifically stated on the product's label, subject to the inherent risk of use also disclosed on the product's label.

### **THIRTY-FOURTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**

#### **(Limitation of Remedy)**

39. Defendant has effectively precluded any assertion by plaintiffs of an alleged statement and/or representation and/or agreement made by this answering defendant or any of its agents or representatives as means to avoid the disclaimers of warranties and limitations of remedies on the product label.

### **THIRTY- FIFTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**

#### **(Necessary Parties)**

40. Plaintiffs have failed to properly join all parties which are necessary or indispensable to this action in accordance with the California Code of Civil Procedure.

### **THIRTY-SIXTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**

#### **(Waiver/Estoppel)**

41. Upon information and belief, plaintiffs have waived and/or are estopped from asserting each purported cause of action in the complaint.

### **THIRTY-SEVENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**

#### **(State of the Art)**

42. At all material times, the state of the medical and industrial art was such that there was no generally accepted or recognized knowledge of any unavoidably unsafe, inherently dangerous, hazardous or defective character, or nature, of asbestos products, when used in the manner and for the purposes intended and in the circumstances of plaintiffs' and/or others use or exposure, so that there was no duty by THAN to know of such character or nature, or to warn plaintiffs and/or others similarly situated.

### **THIRTY-EIGHTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**

#### **(Statute of Repose)**

43. This action was not brought within the time limit for the commencement of such actions by the governing statute of repose.

**THIRTY-NINTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE****(No Exposure)**

44. Plaintiffs fail to state any claims and are accordingly barred from recovering herein, because plaintiffs have failed to identify any exposure to asbestos caused by THAN.

**FORTIETH SEPARATE AND AFFIRMATIVE DEFENSE****(Set-Off)**

45. THAN is entitled to set-offs for any amount paid or to be paid to plaintiffs as settlement for damages arising out of the claims asserted in the complaint.

**FORTY-FIRST SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE****(Set-Off)**

46. The complaint is barred because plaintiffs' injuries, if any, arose out of and occurred in the course and scope of plaintiffs' employment, and were legally caused by the negligence or other wrongful conduct of said employer(s), such that THAN is entitled to a set-off against any award of damages herein made to plaintiffs to the extent of workers' compensation benefits received or to be received by plaintiffs pursuant to the doctrine of *Witt v. Jackson*, 57 Cal. 2d 57 (1961). By reason of the negligent and wrongful conduct by plaintiffs, and if THAN be found liable for any alleged injuries or damages in this litigation, any recovery by plaintiffs' employers and/or their workers' compensation insurance carriers should be reduced and/or barred pursuant to the doctrine and rules embodied in *Witt v. Jackson*, 57 Cal. 2d 57 (1961).

**FORTY-SECOND SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE****(Set-Off)**

47. At all times mentioned, plaintiffs and/or others were acting in the course and scope of their employment and the injuries sustained by the plaintiffs, if any, were caused or contributed to by the carelessness and negligence of plaintiffs' and/or others' employers and/or co-employees, entitling THAN to a set-off in an amount equal to the extent of payments, if any, received by plaintiffs from the employers or their workers' compensation insurance carriers.

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**FORTY-THIRD SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE****(Proportionate Share)**

48. In the event the plaintiffs in this action are entitled to a joint judgment against THAN and any of the other defendants, THAN is entitled to an order of court that each of said judgment debtors pay to plaintiffs their or its proportionate share of the joint judgment as determined by the trier of fact and further, in the event that THAN is required to pay to plaintiffs a disproportionate share of the judgment, THAN will be awarded judgment of contribution against any judgment debtors who paid less than said debtors' proportionate share, in the amount of said underpayment.

**FORTY-FOURTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE****(Successor Liability)**

49. THAN denies any and all liability to the extent that THAN's liability is asserted to be as a successor, successor-in-business, successor-in-interest, successor in products line or a portion thereof, assign, or predecessor, predecessor-in-business, predecessor-in-interest, predecessor in product line or a portion thereof, parent, alter-ego, subsidiary, wholly or partially owned by, or the whole or partial owner or member in an entity owning property, maintaining premises, research, studying, manufacturing, fabricating, designing, labeling, assembling, distributing, leasing, buying, offering for sale, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, re-branding, manufacturing for others, packaging and advertising any of the products to which plaintiffs allege exposure.

**FORTY-FIFTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE****(Indemnification)**

50. The complaint and each purported cause of action contained therein are barred because any liability alleged by the plaintiffs is completely indemnified by other third parties.

**FORTY-SIXTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE****(No Duty/Peculiar Risk)**

51. Plaintiffs are barred from asserting liability against THAN pursuant to the legal principles formulated in the case of *Privette v. Superior Court*, 5 Cal. 4th 689 (1993) and subsequent  
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1 case law, including but not limited to *Camargo v. Tjaarda Dairy*, 25 Cal. 4th 1235 (2001), including,  
 2 but not limited to, no duty and peculiar risk doctrine.

3 **FORTY-SEVENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**

4 **(Unusual Susceptibility)**

5 52. Plaintiffs are barred from recovery in that the injuries or damages plaintiffs allege  
 6 were proximately caused or contributed to by plaintiffs' unusual susceptibility or hypersensitive  
 7 reactions.

8 **FORTY-EIGHTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**

9 **(Market Share)**

10 53. Plaintiffs' purported extension of market share liability fails to state a cause of action  
 11 because it cannot apply to a generic name for a family of minerals with widely divergent toxicities  
 12 that have different uses and, in addition, these plaintiffs have failed to join a substantial share of the  
 13 overall national asbestos market.

14 **FORTY-NINTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**

15 **(Sophisticated User)**

16 54. Plaintiffs' claims against THAN are barred by the Sophisticated User Doctrine.

17 **FIFTIETH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**

18 **(Reservation of Rights)**

19 55. THAN is unable to determine at this time all of the affirmative defenses that it may  
 20 have against plaintiffs' allegations as the complaint is vague. THAN reserves the right to assert  
 21 further affirmative defenses as the facts of this case are revealed.

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1 WHEREFORE, answering defendant THAN prays that plaintiffs take nothing by the  
2 complaint and that answering defendant THAN has judgment for its costs of suit and attorneys' fees  
3 and for such other and further relief as this court may deem just and proper.

4 Dated: February 5, 2008

KNOTT & GLAZIER, LLP

5 By: /s/ Michael D. Smith  
6 Michael D. Smith, SBN 235727  
7 201 Spear Street, Suite 1520  
8 San Francisco, California 94105  
9 Phone: (415) 356-1100  
10 Fax: (415) 356-1105

Attorneys for Defendant

11 T H AGRICULTURE & NUTRITION, LLC  
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**PROOF OF SERVICE OF ELECTRONIC TRANSMISSION**

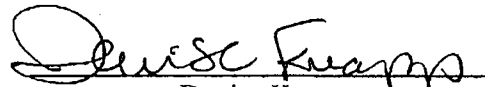
I, the undersigned, declare: that I am, and was at the time of service of the documents herein referred to, over the age of 18 years, and not a party to the action; and I am employed in the County of San Francisco, State of California. My business address is 201 Spear Street, Suite 1520, San Francisco, California 94105. My electronic notification address is knapp@knottglazier.com.

On the date executed below, I electronically served the following document(s) via LexisNexis File & Serve described as:

**ANSWER OF DEFENDANT T H AGRICULTURE & NUTRITION, LLC  
TO PLAINTIFFS' COMPLAINT FOR DAMAGES**

on the recipients designated on the Transaction Receipt located on the LexisNexis File & Serve website. This service was completed in accordance with Amended General Order No. 158.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct and that this proof of service was executed on February 6, 2008, at San Francisco, California.

  
Denise Knapp

# **EXHIBIT 21**

KASOWITZ, BENSON, TORRES & FRIEDMAN LLP  
101 CALIFORNIA STREET, SUITE 2050  
SAN FRANCISCO, CALIFORNIA 94111

Warren A. Jackson (State Bar No. 209483)  
Kristin D. Buehler (State Bar No. 202315)  
KASOWITZ, BENSON, TORRES & FRIEDMAN, LLP  
101 California Street, Suite 2050  
San Francisco, CA 94111  
Telephone: (415) 421-6140  
Facsimile: (415) 398-5030

Attorneys for Defendant  
**CYPRUS AMAX MINERALS  
COMPANY**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN FRANCISCO**

THOMAS JORGENSEN and PATRICIA  
JORGENSEN,

Plaintiffs,

vs.

A.W. CHESTERTON COMPANY, et al.,  
Defendants.

Case No: CGC-08-274494

**CYPRUS AMAX MINERALS COMPANY'S  
OBJECTION TO ASSIGNMENT TO  
COMMISSIONER FOR TRIAL**

Case Filed: January 3, 2008

PLEASE TAKE NOTICE THAT PURSUANT TO San Francisco County Uniform Local  
Rules, 6.1(c), Defendant CYPRUS AMAX MINERALS COMPANY ("Defendant") does not  
stipulate, and hereby objects, to any assignment of this case for trial by a Commissioner.  
Defendant's first pleading is filed concurrently herewith.

DATED: February 6, 2008

KASOWITZ BENSON TORRES & FRIEDMAN LLP

By: /s/ Warren A. Jackson  
WARREN A. JACKSON  
Attorneys for Defendant  
**CYPRUS AMAX MINERALS COMPANY**

**ELECTRONIC PROOF OF SERVICE**

I, the undersigned, declare:

I am a resident of the state of California and over the age of eighteen (18) years, and not a party to the within action. I am an employee of Kasowitz, Benson, Torres & Friedman LLP, and my business address is 101 California Street, Suite 2050, San Francisco, CA 94111.

On the date below, I caused to be served via Lexis Nexis File & Serve the following document(s):

**CYPRUS AMAX MINERALS COMPANY'S OBJECTION TO ASSIGNMENT TO COMMISSIONER FOR TRIAL**

on the parties designated on the transaction receipt located on the Lexis Nexis File & Serve website. Service will be deemed effective as provided for in Amended General Order No. 158.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 6, 2008, at San Francisco, California

/s/ Aaron Nathan

AARON NATHAN

# **EXHIBIT 22**

KASOWITZ, BENSON, TORRES & FRIEDMAN LLP  
101 CALIFORNIA STREET, SUITE 2050  
SAN FRANCISCO, CALIFORNIA 94111

Warren A. Jackson (State Bar No. 209483)  
Kristin D. Buehler (State Bar No. 202315)  
KASOWITZ, BENSON, TORRES & FRIEDMAN, LLP  
101 California Street, Suite 2050  
San Francisco, CA 94111  
Telephone: (415) 421-6140  
Facsimile: (415) 398-5030

Attorneys for Defendant  
**CYPRUS AMAX MINERALS  
COMPANY**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN FRANCISCO**

THOMAS JORGENSEN and PATRICIA  
JORGENSEN,

Plaintiffs,

vs.

A.W. CHESTERTON COMPANY, et al.,  
Defendants.

Case No: CGC-08-274494

**CYPRUS AMAX MINERALS COMPANY'S  
DEMAND FOR JURY TRIAL**

Case Filed: January 3, 2008

TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO ALL PARTIES HEREIN:

PLEASE TAKE NOTICE that Defendant CYPRUS AMAX MINERALS COMPANY  
hereby demands a trial by jury in the above-entitled action.

DATED: February 6, 2008

KASOWITZ BENSON TORRES & FRIEDMAN LLP

By: /s/ Warren A. Jackson  
WARREN A. JACKSON  
Attorneys for Defendant  
**CYPRUS AMAX MINERALS COMPANY**

**ELECTRONIC PROOF OF SERVICE**

I, the undersigned, declare:

I am a resident of the state of California and over the age of eighteen (18) years, and not a party to the within action. I am an employee of Kasowitz, Benson, Torres & Friedman LLP, and my business address is 101 California Street, Suite 2050, San Francisco, CA 94111.

On the date below, I caused to be served via Lexis Nexis File & Serve the following document(s):

**CYPRUS AMAX MINERALS COMPANY'S DEMAND FOR JURY TRIAL**

on the parties designated on the transaction receipt located on the Lexis Nexis File & Serve website. Service will be deemed effective as provided for in Amended General Order No. 158.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 6, 2008, at San Francisco, California

/s/ Aaron Nathan

AARON NATHAN

# **EXHIBIT 23**



Warren A. Jackson (State Bar No. 209483)  
Kristin D. Buehler (State Bar No. 202315)  
KASOWITZ, BENSON, TORRES & FRIEDMAN, LLP  
101 California Street, Suite 2050  
San Francisco, CA 94111  
Telephone: (415) 421-6140  
Facsimile: (415) 398-5030

Attorneys for Defendant  
**CYPRUS AMAX MINERALS  
COMPANY**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN FRANCISCO**

THOMAS JORGENSEN and PATRICIA  
JORGENSEN,

Plaintiffs,

vs.

A.W. CHESTERTON COMPANY, et al.,  
Defendants.

Case No: CGC-08-274494

**CYPRUS AMAX MINERALS COMPANY'S  
ANSWER TO COMPLAINT FOR  
DAMAGES - ASBESTOS**

Case Filed: January 3, 2008

CYPRUS AMAX MINERALS COMPANY ("Defendant") answers the unverified  
Complaint of plaintiffs THOMAS JORGENSEN and PATRICIA JORGENSEN ("Plaintiffs")  
herein on its own behalf and on behalf of no other defendant or entity as follows:

Pursuant to California Code of Civil Procedure section 431.30(d), Defendant denies, both  
generally and specifically, each and every allegation contained in the Complaint.

**FOR A FIRST SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

Alleges that the Complaint, and each and every cause of action therein, fails to state facts  
sufficient to constitute a cause of action against answering Defendant upon which relief can be  
granted.

**FOR A SECOND SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

Alleges that to the extent the Complaint asserts Defendant's alleged "market share"

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1 liability, or "enterprise liability," the Complaint fails to state facts sufficient to constitute a cause  
2 of action against Defendant.

3 **FOR A THIRD SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

4 Alleges that the Complaint fails to state facts sufficient to entitle Plaintiffs to an award of  
5 punitive damages against Defendant, and the imposition of any punitive damages in this matter  
6 would deprive Defendant of its property without due process of law under the California  
7 Constitution and the United States Constitution, would violate the United States Constitution's  
8 prohibition against laws impairing the obligation of contracts, and would constitute a criminal  
9 fine or penalty in violation of the United States Constitution.

10 **FOR A FOURTH SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

11 Alleges that Plaintiffs' claims are barred by the doctrine of laches and section 583, et seq.,  
12 of the Code of Civil Procedure.

13 **FOR A FIFTH SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

14 Alleges that Plaintiffs were negligent in and about the matters alleged in the Complaint,  
15 and that this negligence proximately caused, in whole or in part, the damages alleged in the  
16 Complaint. In the event Plaintiffs are entitled to any damages, the amount of these damages  
17 should be reduced by the comparative fault of Plaintiffs and any person whose negligent acts or  
18 omissions are imputed to Plaintiffs.

19 **FOR A SIXTH SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

20 Alleges that Plaintiffs knowingly, voluntarily and unreasonably undertook to encounter  
21 each of the risks and hazards, if any, referred to in the Complaint and each alleged cause of  
22 action, and this undertaking proximately caused and contributed to any loss, injury or damages  
23 incurred by Plaintiffs.

24 **FOR A SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

25 Alleges that the loss, injury, or damage, if any, incurred by Plaintiffs was the result of  
26 superseding or intervening causes arising from negligent or willful acts or omissions by parties  
27 which Defendant neither controlled nor had the right to control, and said losses, injuries, or

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1 damages were not proximately or legally caused by any act, omission, or other conduct of  
2 Defendant.

3 **FOR AN EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

4 Alleges that Plaintiffs failed to mitigate their damages, if any, in that they failed to use  
5 reasonable diligence in caring for their injuries and reasonable means to prevent aggravation or  
6 to accomplish their healing.

7 **FOR A NINTH SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

8 Alleges that the Court lacks subject matter jurisdiction over the matters alleged in the  
9 Complaint because the Complaint and each cause of action against Defendant are barred by the  
10 provisions of Labor Code sections 3600-3602.

11 **FOR A TENTH SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

12 Alleges that at the time of the injuries alleged in the Complaint, Plaintiff was employed  
13 and was entitled to receive workers' compensation benefits from his employers' workers'  
14 compensation insurance carrier; that all of Plaintiff's employers, other than Defendant, were  
15 negligent in and about the matters referred to in the Complaint; and that such negligence  
16 proximately and concurrently contributed to the occurrence of the injury-causing events and to  
17 any loss or damage complained of by Plaintiffs; and that by reason thereof Defendant is entitled  
18 to set off and/or reduce any such workers' compensation benefits received or to be received by  
19 Plaintiffs against any judgment which may be rendered in favor of Plaintiffs.

20 **FOR AN ELEVENTH SEPARATE AND AFFIRMATIVE DEFENSE,**  
21 **DEFENDANT:**

22 Alleges that at the time of the injuries alleged in the Complaint, Plaintiff's employers  
23 were negligent in and about the matters referred to in the Complaint; that such negligence on the  
24 part of said employers proximately and concurrently contributed to any loss or damage  
25 complained of by Plaintiffs; and that Defendant is not liable for said employers' proportionate  
26 share of loss or damage.

27 **FOR A TWELFTH SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

28 Alleges that at the time of the injuries alleged in the Complaint, parties other than

1 Defendant were negligent in and about the matters referred to in the Complaint; that such  
2 negligence on the part of said parties proximately and concurrently contributed to any loss or  
3 damage complained of by Plaintiffs; and that Defendant is not liable for said parties'  
4 proportionate share of loss or damage.

5 **FOR A THIRTEENTH SEPARATE AND AFFIRMATIVE DEFENSE,**  
6 **DEFENDANT:**

7 Alleges that at all times relative to matters alleged in the Complaint, all of Plaintiff's  
8 employers, other than Defendant, were sophisticated users of asbestos-containing products and  
9 said employers' negligence in providing the product to its employees in a negligent, careless and  
10 reckless manner was a superseding cause of Plaintiffs' loss or damage, if any.

11 **FOR A FOURTEENTH SEPARATE AND AFFIRMATIVE DEFENSE,**  
12 **DEFENDANT:**

13 Alleges that Plaintiffs were not in privity with Defendant and, therefore, may not rely  
14 upon the theory of any alleged breach of warranty.

15 **FOR A FIFTEENTH SEPARATE AND AFFIRMATIVE DEFENSE,**  
16 **DEFENDANT:**

17 Alleges that Plaintiffs are barred from recovery in that any products supplied by  
18 Defendant were in conformity with the existing state of the art and, as a result, these products  
19 were not defective in any manner.

20 **FOR A SIXTEENTH SEPARATE AND AFFIRMATIVE DEFENSE,**  
21 **DEFENDANT:**

22 Alleges that Defendant did not and does not have a substantial percentage of the market  
23 for the asbestos-containing products which allegedly caused Plaintiff's injuries, and therefore,  
24 Defendant may not be held liable to Plaintiffs based on Defendants' alleged percentage share of  
25 any applicable market.

26 **FOR A SEVENTEENTH SEPARATE AND AFFIRMATIVE DEFENSE,**  
27 **DEFENDANT:**

28 Denies any and all liability to the extent that Plaintiffs assert Defendant's alleged liability

1 as a successor, assign, predecessor, parent, alter ego, trustee, subsidiary (wholly or partially  
2 owned by, or the whole or partial owner of), or member in an entity researching, studying,  
3 manufacturing, fabricating, designing, labeling, assembling, distributing, leasing, buying,  
4 offering for sale, inspecting, servicing, installing, contracting for installation, repairing,  
5 marketing, warranting, re-branding, packaging and or advertising a certain substance, the generic  
6 name of which is asbestos.

7 **FOR AN EIGHTEENTH SEPARATE AND AFFIRMATIVE DEFENSE,**  
8 **DEFENDANT:**

9 Alleges that as a result of the acts, conduct, and omissions of Plaintiffs and their agents,  
10 each cause of action in the Complaint has been waived.

11 **FOR A NINETEENTH SEPARATE AND AFFIRMATIVE DEFENSE,**  
12 **DEFENDANT:**

13 Alleges that any tobacco use by Plaintiff is an assumption of a known risk; that said  
14 conduct constitutes negligence and proximately caused and contributed to Plaintiffs' loss and  
15 damage, if any; and therefore, any recovery by Plaintiffs is barred or proportionately reduced.

16 **FOR A TWENTIETH SEPARATE AND AFFIRMATIVE DEFENSE,**  
17 **DEFENDANT:**

18 Alleges that, on information and belief, Plaintiffs named Defendant in this action without  
19 reasonable product identification and without reasonable investigation; accordingly, Defendant,  
20 pursuant to Code of Civil Procedure section 128.5, requests reasonable expenses, including  
21 attorneys' fees, incurred by Defendant as a result of Plaintiffs' maintenance of this bad faith  
22 action.

23 **FOR A TWENTY-FIRST SEPARATE AND AFFIRMATIVE DEFENSE,**  
24 **DEFENDANT:**

25 Alleges that Plaintiffs have failed to join all indispensable and/or essential parties needed  
26 for just adjudication. Therefore, this action should be stayed pending joinder of indispensable  
27 and/or essential parties, and if Plaintiffs fail to join all indispensable and/or essential parties, this  
28 action should be dismissed.

1           **FOR A TWENTY-SECOND SEPARATE AND AFFIRMATIVE DEFENSE,**  
2 **DEFENDANT:**

3           Alleges that Plaintiffs' action is barred entirely by the terms and provisions of Code of  
4 Civil Procedure section 361.

5           **FOR A TWENTY-THIRD SEPARATE AND AFFIRMATIVE DEFENSE,**  
6 **DEFENDANT:**

7           Alleges that Plaintiff's employers so negligently, carelessly, recklessly, and unlawfully  
8 directed, controlled, and supplied Plaintiff's co-employees with a working environment,  
9 including safety and protective equipment, clothing or the lack thereof, so as to directly and  
10 proximately cause and contribute to the injuries in question, if the same do exist, and to the  
11 extent that any sum or sums have been paid to Plaintiffs by said employer, this claim is barred  
12 thereby.

13           **FOR A TWENTY-FOURTH SEPARATE AND AFFIRMATIVE DEFENSE,**  
14 **DEFENDANT:**

15           Alleges that Plaintiffs' Complaint and each and every cause of action therein based upon  
16 warranty or breach thereof, is barred as result of failure of Plaintiffs to give notice required under  
17 Commercial Code section 2607(3)(a).

18           **FOR A TWENTY-FIFTH SEPARATE AND AFFIRMATIVE DEFENSE,**  
19 **DEFENDANT:**

20           Alleges that any product referred to in the Complaint that was allegedly supplied by  
21 Defendant was misused, abused or altered by a party or parties other than, and without the  
22 permission of, Defendant, its employees, servants, or other agents, in a way that was not  
23 reasonably foreseeable to Defendant. Such misuse, abuse or alteration proximately caused any  
24 loss, injury or damage incurred by Plaintiffs.

25           **FOR A TWENTY-SIXTH SEPARATE AND AFFIRMATIVE DEFENSE,**  
26 **DEFENDANT:**

27           Alleges that any product referred to in the Complaint that was allegedly supplied by  
28 Defendant was improperly maintained and cared for by Plaintiff or his employer or agents; that

1 such improper maintenance and care created the defect, if any that was the proximate or legal  
2 cause of Plaintiffs' injuries and damages, if any; that such improper maintenance and care were  
3 unforeseeable to Defendant; and that Plaintiffs' claim is thereby reduced by the percentage of all  
4 responsibility attributable to Plaintiffs, their employers or agents by virtue of said improper  
5 maintenance and care.

6 **FOR A TWENTY-SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE,**  
7 **DEFENDANT:**

8 Alleges that, if Defendant is responsible to Plaintiffs, which responsibility is expressly  
9 denied, Defendant shall be liable to Plaintiffs only for the amount of non-economic damages  
10 allocated to Defendant in direct proportion to Defendant's percentage of fault, if any.

11 **FOR A TWENTY-EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE,**  
12 **DEFENDANT:**

13 Alleges that, if the products described in the Complaint were manufactured or distributed  
14 by Defendant, they were manufactured or distributed in accordance with specifications and  
15 requirements supplied to Defendant by persons other than Defendant including, but not limited  
16 to, the government of the United States of America. Any defect in said products was caused by  
17 deficiencies in said mandatory specifications and requirements supplied to Defendant, which  
18 deficiencies were neither known to Defendant nor discoverable by Defendant with the exercise  
19 of reasonable care.

20 **FOR A TWENTY-NINTH SEPARATE AND AFFIRMATIVE DEFENSE,**  
21 **DEFENDANT:**

22 Alleges that any exposure of Plaintiff to Defendant's products was so minimal as to be  
23 insufficient to establish to a reasonable degree of probability that any such product caused any  
24 alleged injury, damage, or loss to Plaintiffs.

25 **FOR A THIRTIETH SEPARATE AND AFFIRMATIVE DEFENSE,**  
26 **DEFENDANT:**

27 Alleges that, if Defendant has purportedly been named or served in this action as a Doe  
28 defendant, such effort by Plaintiffs is invalid on the ground that Plaintiffs knew or should have

1 known of the identity of Defendant and Plaintiffs' alleged causes of action against Defendant at  
2 the time of the filing of the complaint.

3 **FOR A THIRTY-FIRST SEPARATE AND AFFIRMATIVE DEFENSE,**  
4 **DEFENDANT:**

5 Is informed and believes, and upon such information and belief alleges that Plaintiff was  
6 negligent, careless, reckless, and acted unlawfully in the use, control, direction and application of  
7 the equipment, safety devices, and other facilities supplied to him, and existing as a part of his  
8 environment, and the injuries, if any, and damages, if any, were directly and proximately caused  
9 and contributed to by his own negligence.

10 **FOR A THIRTY-SECOND SEPARATE AND AFFIRMATIVE DEFENSE,**  
11 **DEFENDANT:**

12 Is informed and believes and upon such information and belief alleges that Plaintiff  
13 misused the product and used same after knowledge of defect, if any, existing therein.

14 **FOR A THIRTY-THIRD SEPARATE AND AFFIRMATIVE DEFENSE,**  
15 **DEFENDANT:**

16 Alleges that the Complaint, and each and every cause of action therein, is barred by the  
17 applicable statute of limitations, including, but not limited to, California Code of Civil Procedure  
18 sections 338(1), 338(4), 339(1), 340(1), 340(3), 340.2, 343 and 353, and California Commercial  
19 Code section 2725.

20  
21 WHEREFORE, Defendant prays:

- 22 1) That Plaintiffs take nothing by their Complaint;  
23  
24 2) That judgment be entered in favor of Defendant;  
25  
26 3) For recovery of Defendant's costs of suit;

27 ///

28 ///



KASOWITZ, BENSON, TORRES & FRIEDMAN LLP  
101 CALIFORNIA STREET, SUITE 2050  
SAN FRANCISCO, CALIFORNIA 94111

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- 4) For appropriate credits and set-offs arising out of any payment of worker's compensation benefits as alleged above; and
- 5) For such other and further relief as the Court deems just and proper.

DATED: February 6, 2008

KASOWITZ BENSON TORRES & FRIEDMAN LLP

By: /s/ Warren A. Jackson  
WARREN A. JACKSON  
Attorneys for Defendant  
CYPRUS AMAX MINERALS COMPANY

**ELECTRONIC PROOF OF SERVICE**

I, the undersigned, declare:

I am a resident of the state of California and over the age of eighteen (18) years, and not a party to the within action. I am an employee of Kasowitz, Benson, Torres & Friedman LLP, and my business address is 101 California Street, Suite 2050, San Francisco, CA 94111.

On the date below, I caused to be served via Lexis Nexis File & Serve the following document(s):

**CYPRUS AMAX MINERALS COMPANY'S ANSWER TO COMPLAINT FOR DAMAGES - ASBESTOS**

on the parties designated on the transaction receipt located on the Lexis Nexis File & Serve website. Service will be deemed effective as provided for in Amended General Order No. 158.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 6, 2008, at San Francisco, California

/s/ Aaron Nathan

AARON NATHAN

# **EXHIBIT 24**

1 LISA L. OBERG (BAR NO. 120139)  
2 MCKENNA LONG & ALDRIDGE LLP  
3 101 California Street  
4 41st Floor  
5 San Francisco, CA 94111  
6 Telephone: (415) 267-4000  
7 Facsimile: (415) 267-4198

8 Attorneys for Defendant  
9 ITT CORPORATION sued herein as ITT  
10 INDUSTRIES, INC., individually and as successor-  
11 in-interest to ALLIS CHALMERS, CORP. and  
12 BELL and GOSSETT

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **COUNTY OF SAN FRANCISCO**

15 THOMAS JORGENSEN and PATRICIA  
16 JORGENSEN,

17 Plaintiffs,

18 v.

19 A.W. CHESTERTON COMPANY, et al.,

20 Defendants.

CASE No. CGC-08-274494

**ANSWER OF DEFENDANT, ITT  
CORPORATION sued herein as ITT  
INDUSTRIES, INC., individually and as  
successor-in-interest to ALLIS CHALMERS,  
CORP. and BELL and GOSSETT, TO  
PLAINTIFFS' COMPLAINT FOR  
DAMAGES FOR PERSONAL INJURY**

21 COMES NOW defendant, ITT CORPORATION sued herein as ITT INDUSTRIES, INC.,  
22 individually and as successor-in-interest to ALLIS CHALMERS, CORP. and BELL and  
23 GOSSETT, for itself and for no other defendant, to answer plaintiffs' complaint on file herein as  
24 follows:

25 1. Pursuant to *California Code of Civil Procedure* section 431.30(d), answering  
26 defendant denies, both generally and specifically, each and every allegation contained in the  
27 complaint, and each cause of action therein, and each paragraph of each cause of action, and  
28 denies that, as a direct and proximate result or any result of any tortious conduct on the part of  
this defendant, plaintiffs have been or will be injured or damaged in the manner and amount  
alleged or in any manner or amount whatsoever.

2. Answering defendant denies that, by reason of any act or omission, fault, conduct, or liability on the part of answering defendant, plaintiffs have been injured or damaged in the manner and amounts alleged or in any manner or amount whatsoever, and denies that this answering defendant or any of its agents, servants or employees, or anyone acting for or on its behalf was negligent, careless, reckless, or otherwise breached any duty owed to plaintiffs, whether as alleged or otherwise.

**FOR A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

3. Alleges that the complaint, and each and every cause of action therein, is barred by the applicable statute of limitations, *California Code of Civil Procedure* section 335.1.

**FOR A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

4. Alleges that the complaint, and each and every cause of action therein, is barred by the applicable statute of limitations, *California Code of Civil Procedure* section 340.2.

**FOR A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

5. Alleges that the product involved was materially altered or changed by a party or parties other than, and without the permission of, this answering defendant, its employees, servants, or other agents, such alteration or change creating the alleged defect, if any, which was the proximate or legal cause of plaintiffs' injuries, or damages, if any.

**FOR A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

6. Alleges that the defect in the product, if any, was known to plaintiffs, who used said product after full knowledge of said alleged defect; that, as a result, plaintiffs are barred from recovery herein, proportionately or totally, in that they voluntarily exposed themselves and their property to a known danger and thereby assumed the risk of any injury or damage resulting from that injury.

**FOR A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

7. Alleges that plaintiffs' complaint and each and every cause of action therein based upon warranty or breach thereof, is barred as a result of failure of plaintiffs to give notice required under *Commercial Code* section 2607(3)(a).

**FOR A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

8. Alleges that the product was improperly maintained and cared for by plaintiffs or their employer or their agents; that such improper maintenance and care created the defect, if any, that was the proximate or legal cause of plaintiffs' injuries and damages, if any; that such improper maintenance and care was unforeseeable to this answering defendant; and that plaintiffs' claim is thereby reduced by the percentage of all responsibility attributable to plaintiffs, their employer or other agents by virtue of said improper maintenance and care.

**FOR A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

9. Alleges that the complaint, and each and every cause of action therein, is barred by the applicable statute of limitations, *Code of Civil Procedure* section 338(d).

**FOR AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

10. Alleges that the loss, injury, or damage, if any, incurred by plaintiffs were the result of superseding or intervening causes arising from negligent or willful acts or omissions by parties which defendant neither controlled nor had the right to control, and said losses, injuries, or damages were not proximately or legally caused by any act, omission, or other conduct of defendant.

**FOR A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

11. Alleges that the plaintiffs failed to mitigate their damages, if any, in that they failed to use reasonable diligence in caring for their injuries and reasonable means to prevent their aggravation or to accomplish their healing.

**FOR A TENTH, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

12. Alleges that, if this defendant is responsible to plaintiffs, which responsibility is expressly denied, this defendant shall be liable to plaintiffs only for the amount of non-economic damages allocated to this defendant in direct proportion to this defendant's percentage of fault, if any.

**FOR AN ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

13. Alleges that plaintiffs' claims are barred by the doctrine of laches.

**FOR A TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

14. Alleges that, if the products described in the complaint were manufactured or distributed by defendant, they were manufactured or distributed in accordance with specifications and requirements supplied to defendant by persons other than defendant including, but not limited to, the government of the United States of America. Any defect in said products was caused by deficiencies in said mandatory specifications and requirements supplied to defendant, which deficiencies were neither known to defendant nor discoverable by defendant with the exercise of reasonable care.

**FOR A THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

15. Alleges that plaintiffs were not in privity with defendant and, therefore, may not rely upon the theory of any alleged breach of express or implied warranty.

**FOR A FOURTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

16. Alleges that any exposure of plaintiffs to defendant's products was so minimal as to be insufficient to establish to a reasonable degree of probability that any such product caused any alleged injury, damage, or loss to plaintiffs.

**FOR A FIFTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

17. Alleges that, if defendant has purportedly been named or served in this action as a Doe defendant, such effort by plaintiffs is invalid on the ground that plaintiffs knew or should have known of the identity of the defendant and the plaintiffs' alleged causes of action against defendant at the time of the filing of the complaint.

**FOR A SIXTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

18. Is informed and believes, and upon such information and belief alleges that plaintiffs were negligent, careless, reckless, and acted unlawfully in the use, control, direction and application of their bodily movements and the equipment, safety devices, and other facilities supplied to them, and existing as a part of their environment, and the injuries, if any, and damages, if any, were directly and proximately caused and contributed to by their own negligence.

**FOR A SEVENTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

19. Is informed and believes and upon such information and belief alleges that plaintiffs misused the product and used same after knowledge of defect, if any, existing therein.

**FOR AN EIGHTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

20. Alleges that the plaintiffs' employer so negligently, carelessly, recklessly, and unlawfully directed, controlled, and supplied plaintiffs and plaintiffs' co-employees with a working environment, including safety and protective equipment, clothing or the lack thereof, so as to directly and proximately cause and contribute to the injuries in question, if the same do exist, and to the extent that any sum or sums have been paid to plaintiffs by said employer, this claim is barred thereby.

**FOR A NINETEENTH, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

21. Alleges that the complaint, and each and every cause of action therein, fails to state facts sufficient to constitute a cause of action against defendant and is barred by the provisions of *Labor Code* section 3600.

**FOR A TWENTIETH, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

22. Alleges that the complaint, and each and every cause of action therein, fails to state facts sufficient to constitute a cause of action against defendant and is barred by the provisions of *Labor Code* section 3601.

**FOR A TWENTY-FIRST, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

23. Alleges that the complaint, and each and every cause of action therein, fails to state facts sufficient to constitute a cause of action against defendant and is barred by the provisions of *Labor Code* section 3602.

**FOR A TWENTY-SECOND, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

24. Alleges that the complaint, and each and every cause of action therein, fails to state facts sufficient to constitute a cause of action against answering defendant upon which relief can be granted.



**FOR A TWENTY-THIRD, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

25. Alleges that the statutory authority, including but not limited to *California Civil Code* section 3294, pursuant to which plaintiffs claim punitive damages is invalid on its face and/or as applied to this defendant pursuant to the First, Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States and Article I of the Constitution of the State of California.

**FOR A TWENTY-FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

26. Alleges that plaintiffs' action is barred by the provisions of *California Code of Civil Procedure* section 361 in that plaintiffs' claims arose in another state or foreign country, and by the laws thereof an action cannot be maintained against this answering defendant.

**FOR A TWENTY-FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

27. Alleges that the instant action is barred by the rule against splitting a cause of action.

**FOR A TWENTY-SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

28. Alleges that plaintiffs are collaterally estopped or barred by the doctrine of *res judicata* from maintaining this action and/or seeking damages against this answering defendant.

**FOR A TWENTY-SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT:**

29. Alleges that defendant is not a successor, successor in business, successor in product line or portion thereof, assign, predecessor in product line or portion thereof, parent, alter-ego, subsidiary, wholly or partially owned by, or the whole or partial owner of or member in any entity owning property, maintaining premises, researching, studying, manufacturing, fabricating, designing, labeling, assembling, distributing, leasing, buying, offering for sale, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, re-branding, manufacturing for others, packaging or advertising any asbestos-containing or silica-containing products. Defendant is therefore not liable for any acts, whether they be active or passive, or omissions of any entities to which defendant is or may be alleged to be a successor-in-interest, predecessor-in-interest, alter-ego or the like.

1 WHEREFORE, defendant prays for judgment herein, for costs of suit incurred herein, and  
2 for such other and further relief as the court may deem just and proper.  
3

4 Dated:

2/6/08

MCKENNA LONG & ALDRIDGE LLP

6 By:

  
LISA L. OBERG

7  
8 Attorneys for Defendant  
9 ITT CORPORATION sued herein as ITT  
10 INDUSTRIES, INC., individually and as  
11 successor-in-interest to ALLIS  
12 CHALMERS, CORP. and BELL and  
13 GOSSETT  
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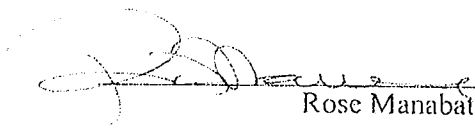
1                   **PROOF OF SERVICE VIA LEXISNEXIS FILE & SERVE**

2  
3           I am a citizen of the United States and employed in San Francisco County, California. I  
4 am over the age of eighteen years and not a party to the within-entitled action. My business  
5 address is 101 California Street, 41st Floor, San Francisco, California 94111.

6           On February 5, 2008, I electronically served the document(s) via LexisNexis File & Serve  
7 described as:

8                   **ANSWER OF DEFENDANT, ITT CORPORATION sued herein as ITT**  
9                   **INDUSTRIES, INC., individually and as successor-in-interest to ALLIS**  
10                   **CHALMERS, CORP. and BELL and GOSSETT, TO PLAINTIFFS'**  
11                   **COMPLAINT FOR DAMAGES FOR PERSONAL INJURY**

12 on the recipients designated on the Transaction Receipt located on the LexisNexis File & Serve  
13 website. I declare under penalty of perjury pursuant to the laws of the State of California that the  
14 foregoing is true and correct and was executed on February 5, 2008, at San Francisco, California.

15  
16                     
17                   Rose Manabat

# **EXHIBIT 25**

1 NATALIE R. NUTTALL (BAR NO. 201082)  
MCKENNA LONG & ALDRIDGE LLP  
2 101 California Street  
41st Floor  
3 San Francisco, CA 94111  
Telephone: (415) 267-4000  
4 Facsimile: (415) 267-4198

5 MARK S. GERAGHTY (BAR NO. 79043)  
MCKENNA LONG & ALDRIDGE LLP  
6 444 South Flower Street  
8<sup>th</sup> Floor  
7 Los Angeles, CA 90071-2901  
Telephone: (213) 688-1000  
8 Facsimile: (213) 243.6330

9 Attorneys for Defendant  
R.T. VANDERBILT COMPANY, INC.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **COUNTY OF SAN FRANCISCO**  
12

13 THOMAS JORGENSEN and PATRICIA  
14 JORGENSEN,

15 Plaintiffs,

16 v.

17 A.W. CHESTERTON COMPANY, *et al.*,

18 Defendants.  
19

CASE No. 274494

**DEFENDANT R.T. VANDERBILT  
COMPANY, INC.'S ANSWER TO  
COMPLAINT AND REQUEST FOR JURY  
TRIAL**

20 COMES NOW defendant R.T. VANDERBILT COMPANY, INC. (hereinafter  
21 "Defendant") and answers Plaintiffs THOMAS JORGENSEN and PATRICIA JORGENSEN's  
22 ("Plaintiffs") Complaint as follows:

23 **GENERAL DENIAL**

24 Pursuant to the provisions of Code of Civil Procedure, § 431.30, this answering Defendant  
25 generally and specifically denies each and every allegation contained in Plaintiffs' Complaint,  
26 and further denies any and all wrongful conduct on its part, whether as alleged or otherwise, and  
27  
28

1 further denies that Plaintiffs have been injured in any manner whatsoever, whether as alleged or  
 2 otherwise, or in any sum or sums, or at all.

### 3 FIRST AFFIRMATIVE DEFENSE

4 Neither the Complaint nor any purported cause of action alleged by the Plaintiffs therein  
 5 states facts sufficient to constitute a cause of action against Defendant.

### 6 SECOND AFFIRMATIVE DEFENSE

7 To the extent the Complaint asserts Defendant's alleged "market share" liability, or  
 8 "enterprise liability," the Complaint fails to state facts sufficient to constitute a cause of action  
 9 against Defendant.

### 10 THIRD AFFIRMATIVE DEFENSE

11 Neither the Complaint nor any purported cause of action alleged therein states facts  
 12 sufficient to entitle Plaintiffs to an award of punitive damages against Defendant.

### 13 FOURTH AFFIRMATIVE DEFENSE

14 Plaintiffs' action, and each alleged cause of action, is barred by the applicable statutes of  
 15 limitations, including but not limited to California Code of Civil Procedure, sections 338(1),  
 16 338(4), 339(1), 340(1), 340(3), 340.2, 343 and 353 and California Commercial Code, section  
 17 2725.

### 18 FIFTH AFFIRMATIVE DEFENSE

19 Plaintiffs unreasonably delayed in bringing this action, without good cause therefore, and  
 20 thereby have prejudiced Defendant as a direct and proximate result of such delay; accordingly,  
 21 their action is barred by laches and by Section 583 et. seq. of the Code of Civil Procedure.

### 22 SIXTH AFFIRMATIVE DEFENSE

23 Plaintiffs were negligent in and about the matters alleged in the Complaint and in each  
 24 alleged cause of action; this negligence proximately caused, in whole or in part, the damages  
 25 alleged in the Complaint. In the event Plaintiffs are entitled to any damages, the amount of these  
 26 damages should be reduced by the comparative fault of Plaintiffs and any person whose negligent  
 27 acts or omissions are imputed to Plaintiffs.

**SEVENTH AFFIRMATIVE DEFENSE**

1  
2 Plaintiffs knowingly, voluntarily and unreasonably undertook to encounter each of the  
3 risks and hazards, if any, referred to in the Complaint and each alleged cause of action, and this  
4 undertaking proximately caused and contributed to any loss, injury or damages incurred by  
5 Plaintiffs.

**EIGHTH AFFIRMATIVE DEFENSE**

6  
7 Any loss, injury or damage incurred by Plaintiffs was proximately caused by the negligent  
8 or willful acts or omissions of parties whom Defendant neither controlled nor had the right to  
9 control, and was not proximately caused by any acts, omissions or other conduct of Defendant.

**NINTH AFFIRMATIVE DEFENSE**

10  
11 The products referred to in the Complaint were misused, abused or altered by Plaintiff  
12 Thomas Jorgensen (also referred to as "Plaintiff") or by others; the misuse, abuse or alteration  
13 was not reasonably foreseeable to Defendant, and proximately caused any loss, injury or damages  
14 incurred by Plaintiffs.

**TENTH AFFIRMATIVE DEFENSE**

15  
16 Plaintiff failed to exercise due diligence to mitigate his loss, injury or damages;  
17 accordingly, the amount of damages to which Plaintiffs are entitled, if any, should be reduced by  
18 the amount of damages which would have otherwise been mitigated.

**ELEVENTH AFFIRMATIVE DEFENSE**

19  
20 The Court lacks subject matter jurisdiction over the matters alleged in the Complaint  
21 because the Complaint and each alleged cause of action against Defendant is barred by the  
22 provisions of California Labor Code, section 3601, et seq.

**TWELFTH AFFIRMATIVE DEFENSE**

23  
24 Defendant alleges that at the time of the injuries alleged in the Complaint, Plaintiff's  
25 employers were negligent in and about the matters referred to in said Complaint, and that such  
26 negligence on the part of said employers proximately and concurrently contributed to any loss or  
27 damage, including non-economic damages, complained of by Plaintiffs, if any, and that  
28 Defendant is not liable for said employers' proportionate share of non-economic damages.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Defendant alleges that at the time of the injuries alleged in the Complaint, parties other than this Defendant were negligent in and about the matters referred to in said Complaint, and that such negligence on the part of said parties proximately and concurrently contributed to any loss or damage, including non-economic damages, complained of by Plaintiffs, if any, and that Defendant herein shall not be liable for said parties' proportionate share of non-economic damages.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Defendant alleges that at all times relative to matters alleged in the Complaint, all of Plaintiff's employers were sophisticated users of asbestos-containing products and said employers' negligence in providing the products, which Plaintiffs allege contain asbestos, to their employees in a negligent, careless and reckless manner was a superseding cause of Plaintiffs' injuries, if any.

**FIFTEENTH AFFIRMATIVE DEFENSE**

This answering Defendant is informed and believes and on that basis alleges that the project or projects upon which Plaintiff was providing labor and services, which employment Plaintiffs claim resulted in the alleged exposure to the allegedly toxic chemicals, were for the procurement of equipment by the government of the United States. To the extent that this answering Defendant provided products as a contractor or subcontractor for the United States, Plaintiffs' claims, and each of them, are barred by the doctrine of governmental contractor immunity as set forth in Boyle v. United Technology Corp., 108 S.Ct. 2510 (1988).

**SIXTEENTH AFFIRMATIVE DEFENSE**

At all times and places in the Complaint, Plaintiffs were not in privity of contract with Defendant and said lack of privity bars Plaintiffs' recovery herein upon any theory of warranty.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs were barred from recovery in that all products produced by Defendant were in conformity with the existing state-of-the-art, and as a result, these products were not defective in any manner.



**EIGHTEENTH AFFIRMATIVE DEFENSE**

The Defendant did not and does not have a substantial percentage of the market for the products which Plaintiffs allege contain asbestos and allegedly caused Plaintiffs' injuries. Therefore, Defendant may not be held liable to Plaintiffs based on this Defendant's alleged percentage share of the applicable market.

**NINETEENTH AFFIRMATIVE DEFENSE**

If Plaintiff received Workers' Compensation benefits from Defendant under the Labor Code of the State of California as a consequence of the alleged industrial injury referred to in the Complaint, and in the event that Defendant is held liable to Plaintiffs, any award against Defendant must be reduced in the amount of all such benefits received by Plaintiff.

**TWENTIETH AFFIRMATIVE DEFENSE**

If Plaintiff received Worker's Compensation benefits from Defendant under the Labor Code of the State of California as a consequence of the alleged industrial injury referred to in the Complaint, and in the event Plaintiffs are awarded damages against Defendant, Defendant claims a credit against this award to the extent that Defendant is barred from enforcing its rights to reimbursement for Worker's Compensation benefits that Plaintiff received.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

If Plaintiff received Workers' Compensation benefits from Defendant under the Labor Code of the State of California as a consequence of the alleged industrial injury referred to in the Complaint, Defendant demands repayment of any such Worker's Compensation benefits in the event that Plaintiffs recover tort damages as a result of the industrial injury allegedly involved herein. Although Defendant denies the validity of Plaintiffs' claims, in the event those claims are held valid and not barred by the statute of limitations or otherwise, Defendant asserts that cross-demands for money have existed between Plaintiffs and Defendant and the demands are compensated, so far as they equal each other, pursuant to California Code of Civil Procedure § 431.70.

WHEREFORE, Defendant demands:

1. That Plaintiffs take nothing by their action against Defendant;

2. That judgment be entered in favor of Defendant;
3. That Defendant be awarded costs of this action and reasonable attorney's fees;
4. That the court appropriate credits and set-offs arising out of any payment of worker's compensation benefits as alleged above; and
5. That the court grant Defendant a jury trial and such further relief as it may deem proper.

Dated: 2/5/08

MCKENNA LONG & ALDRIDGE LLP

By: Natalie R. Nuttall

NATALIE R. NUTTALL  
MARK S. GERAGHTY

Attorneys for Defendant  
R.T. VANDERBILT COMPANY, INC.

REQUEST FOR JURY TRIAL

This answering defendant hereby requests that trial of this action be held before a jury as provided by law.

Dated: 2/5/08

MCKENNA LONG & ALDRIDGE LLP

By: Natalie R. Nuttall

NATALIE R. NUTTALL  
MARK S. GERAGHTY

Attorneys for Defendant  
R.T. VANDERBILT COMPANY, INC.

1                   **PROOF OF SERVICE VIA LEXISNEXIS FILE & SERVE**

2  
3           I am a citizen of the United States and employed in San Francisco County, California. I  
4 am over the age of eighteen years and not a party to the within-entitled action. My business  
5 address is 101 California Street, 41<sup>st</sup> Floor, San Francisco, California 94111.

6           On February 5, 2008, I electronically served the document(s) via LexisNexis File & Serve  
7 described as:

8                   DEFENDANT R.T. VANDERBILT COMPANY, INC.'S  
9                   ANSWER TO COMPLAINT AND REQUEST FOR JURY TRIAL

10 on the recipients designated on the Transaction Receipt located on the LexisNexis File & Serve  
11 website. I declare under penalty of perjury pursuant to the laws of the State of California that the  
12 foregoing is true and correct and was executed on February 5, 2008, at San Francisco, CA.

13  
14                     
15                   CARY ANN ROSKO

# **EXHIBIT 26**

LAW OFFICES  
IMAI, TADLOCK, KEENEY & CORDERY, LLP  
SUITE 1300  
100 BUSH STREET  
SAN FRANCISCO, CA 94104  
(415) 675-7000

Theodore T. Cordery, Esq. (Bar No. 114730)  
IMAI, TADLOCK, KEENEY & CORDERY, LLP  
100 BUSH STREET, SUITE 1300  
SAN FRANCISCO, CA 94104  
Telephone: (415) 675-7000  
Facsimile: (415) 675-7008

Attorneys for Defendant  
RICH-TEX, INC.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO  
UNLIMITED JURISDICTION

THOMAS JORGENSEN and PATRICIA  
JORGENSEN,

Plaintiff,

v.

A.W. CHESTERTON COMPANY, et al.,

Defendant.

CASE NO.: CGC-08-274494

**PROOF OF SERVICE BY ELECTRONIC  
SERVICE OF RICH-TEX, INC.'S ANSWER  
TO COMPLAINT**

Date of Filing: January 3, 2008

I, Heather Cherry, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 100 Bush Street, Suite 1300, San Francisco, CA 94104.

On the date of execution below, I electronically served the document via LexisNexis File & Serve described as:

**RICH-TEX, INC.'S ANSWER TO COMPLAINT**

on the recipients designated on the Transaction Receipt located on the LexisNexis File & Serve Web site.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 5, 2008, at San Francisco, California.

/S/ Heather Cherry

Heather Cherry

# **EXHIBIT 27**

1 Theodore T. Cordery, Esq. (Bar No. 114730)  
2 IMAI, TADLOCK, KEENEY & CORDERY, LLP  
3 100 BUSH STREET, SUITE 1300  
4 SAN FRANCISCO, CA 94104  
5 Telephone: (415) 675-7000  
6 Facsimile: (415) 675-7008

7 Attorneys for Defendant  
8 RICH-TEX, INC.

9  
10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11  
12 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO  
13  
14 UNLIMITED JURISDICTION

15 THOMAS JORGENSEN and PATRICIA  
16 JORGENSEN,

17 Plaintiff,

18 v.

19 A.W. CHESTERTON COMPANY, et al.,

20 Defendant.

CASE NO.: CGC-08-274494

(ASBESTOS)

**RICH-TEX, INC.'S ANSWER TO  
COMPLAINT**

Complaint Filed: January 3, 2008

21 COMES NOW defendant Rich-Tex, Inc. and in answering all causes of Plaintiffs'  
22 unverified Complaint for Personal Injury on file herein, admits, denies and alleges as follows:

23 Under the provisions of Sections 431.30(d) and 472a of the California Code of Civil  
24 Procedure, this answering defendant denies each and every, all and singular, generally and  
25 specifically, the allegations contained therein and the whole thereof, and further denies that  
26 Plaintiffs sustained damages in any sum or sums whatsoever or at all.

27 AS AND FOR A FIRST, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, this  
28 answering defendant alleges that the Complaint and each cause of action therein, fails to state  
facts sufficient to constitute a cause of action.

AS AND FOR A SECOND, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,  
this answering defendant alleges that plaintiffs are barred from recovery by the applicable statute  
of limitations, including but not limited to California Code of Civil Procedure Sections 319, 320,  
337, 337.1, 337.15, 338, 339, 340(3), 340.2, 343.



LAW OFFICES  
IMAI, TADLOCK, KEENEY & CORDERY, LLP  
SUITE 1300  
100 BUSH STREET  
SAN FRANCISCO, CA 94104  
(415) 675-7000

1 AS AND FOR A THIRD, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,  
2 this answering defendant alleges that plaintiffs were negligent and careless in and about the  
3 matters and events alleged in the Complaint, and said negligence proximately contributed to the  
4 alleged damages, if any there were, and as a result thereof, the principles of equitable comparative  
5 negligence must be applied to bar Plaintiffs' action.

6 AS AND FOR A FOURTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,  
7 this answering defendant alleges that the injuries, loss and/or damages alleged in said Complaint  
8 by Plaintiffs, if any there were, were caused by the carelessness and negligence on the part of the  
9 remaining defendants in that said carelessness and negligence on the part of said remaining  
10 defendants proximately contributed to the happening of the subject event and the injuries, loss or  
11 damages alleged by the Plaintiffs herein, and that any judgment rendered against this answering  
12 defendant be reduced or nullified to the extent of such negligence and carelessness on the part of  
13 the remaining defendants as aforesaid.

14 AS AND FOR A FIFTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, this  
15 answering defendant alleges that the Plaintiffs' injuries and damages which may have been  
16 sustained as a result of events mentioned in the Complaint, if any there were, were proximately  
17 caused by the carelessness and negligence of Plaintiffs and the remaining defendants, and that the  
18 respective negligence of each said party to this suit ought to be equitably apportioned among the  
19 parties hereto.

20 AS AND FOR A SIXTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,  
21 this answering defendant alleges that at the time of the occurrence of the matters mentioned in the  
22 Plaintiffs' Complaint, Plaintiffs had knowledge of those matters alleged in the Complaint and that  
23 Plaintiffs did, with said knowledge, voluntarily and of Plaintiffs' free will, act and place himself  
24 in an unsafe and dangerous position and by reason thereof, Plaintiffs did assume the risk and all  
25 risks ordinarily incident thereto.

26 AS AND FOR A SEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
27 DEFENSE, this answering defendant alleges that the products referred to in the Complaint were  
28 not used in a safe and normal manner or in the manner in which they were intended to be used,

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1 and that such misuse proximately contributed to the injuries to the Plaintiffs and the damages and  
 2 losses resulting therefrom, if any there were, and bars Plaintiffs' recovery herein.

3 AS AND FOR A EIGHTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,  
 4 this answering defendant alleges that prior to and at the time referred to in Plaintiffs' Complaint,  
 5 the products referred to in the Complaint were abused, altered, modified, or changed in a manner  
 6 that was not reasonably foreseeable, that such abuse, modification, alteration, or change  
 7 proximately contributed to the injuries to the Plaintiffs and the damages and losses resulting  
 8 therefrom, if any there were, and bars Plaintiffs' recovery herein.

9 AS AND FOR A NINTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,  
 10 this answering defendant alleges that at all times herein mentioned, plaintiffs were in the course  
 11 and scope of his employment and that the injuries sustained by Plaintiffs, if any there were, were  
 12 caused or contributed to by the carelessness and negligence of Plaintiffs' employers, entitling this  
 13 answering defendant to a set-off in an amount equal to the extent of payments made by said  
 14 employers' Workers' Compensation carrier.

15 AS AND FOR A TENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,  
 16 this answering defendant alleges that the Plaintiffs' employers were negligent and careless in and  
 17 about the matters alleged in the Complaint and proximately contributed to the injuries and  
 18 damages, if any there were, sustained by Plaintiffs; that by reason of the premises said employers  
 19 and their Workers' Compensation carrier are barred from recovery of any payments heretofore or  
 20 hereafter made to Plaintiffs pursuant to the Workers' Compensation laws of the State of California  
 21 under the doctrine of Witt v. Jackson, 57 Cal.2d 57.

22 AS AND FOR A ELEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
 23 DEFENSE, this answering defendant alleges that Plaintiffs' Complaint herein is barred by the  
 24 Labor Code §3600, et seq.

25 AS AND FOR A TWELFTH, SEPARATE AND DISTINCT AFFIRMATIVE  
 26 DEFENSE, this answering defendant alleges that plaintiffs' Complaint herein is barred by the  
 27 Doctrine of Laches.

28 ///

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1 AS AND FOR A THIRTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
2 DEFENSE, this answering defendant hereby alleges that the asbestos-containing products of  
3 defendant which are alleged to have caused injury to the plaintiffs were manufactured in  
4 compliance with and supplied pursuant to mandatory government specifications which required  
5 the use of asbestos. Accordingly, defendant is immune from liability for any damages suffered by  
6 the Plaintiffs as a consequence of exposure to asbestos contained in such products.

7 AS AND FOR A FOURTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
8 DEFENSE, this answering defendant alleges that Plaintiffs failed and neglected to use reasonable  
9 care to protect themselves and to minimize the losses and damages complained of, if any there  
10 were.

11 AS AND FOR A FIFTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
12 DEFENSE, this answering defendant alleges that plaintiffs are barred from asserting any claim  
13 based on breach of warranty by reason of the failure to fulfill the conditions of warranties alleged  
14 in the Complaint in the event such alleged warranties are proven at trial.

15 AS AND FOR A SIXTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
16 DEFENSE, this answering defendant alleges that Plaintiffs failed, within a reasonable time, to  
17 give notice to this defendant of the claimed breach of warranty or defects alleged in the  
18 Complaint on file herein in the manner and form prescribed by law.

19 AS AND FOR A SEVENTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
20 DEFENSE, this answering defendant alleges that any claims that the alleged products are unsafe  
21 or defective in any manner are preempted by federal law.

22 AS AND FOR A EIGHTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
23 DEFENSE, this answering defendant alleges that, to the extent Plaintiffs may be able to prove  
24 their allegations concerning liability, injuries and damages, which are specifically denied, said  
25 allegations were the result of intervening acts of superseding negligence on the part of a person or  
26 persons over whom this defendant had neither control nor the right of control.

27 AS AND FOR A NINETEENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
28 DEFENSE, this answering defendant alleges that Plaintiffs are barred from asserting any causes

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1 of action by the Doctrine of Waiver.

2 AS AND FOR A TWENTIETH, SEPARATE AND DISTINCT AFFIRMATIVE  
3 DEFENSE, this answering defendant alleges that Plaintiffs are estopped from asserting any  
4 causes of action by their own conduct.

5 AS AND FOR A TWENTY-FIRST, SEPARATE AND DISTINCT AFFIRMATIVE  
6 DEFENSE, this answering defendant alleges that Plaintiffs have failed to join necessary and  
7 indispensable parties.

8 AS AND FOR A TWENTY-SECOND, SEPARATE AND DISTINCT AFFIRMATIVE  
9 DEFENSE, this answering defendant alleges that plaintiffs have improperly joined or misjoined it  
10 and other parties to this action.

11 AS AND FOR A TWENTY-THIRD, SEPARATE AND DISTINCT AFFIRMATIVE  
12 DEFENSE, this answering defendant alleges that there was no privity or other legal relationship  
13 between this answering defendant and Plaintiffs herein sufficient to entitle Plaintiffs to any legal  
14 relief by said defendant.

15 AS FOR A TWENTY-FOURTH, SEPARATE AND DISTINCT AFFIRMATIVE  
16 DEFENSE, this answering defendant alleges that the Complaint on file herein prays for damages  
17 which are not recoverable under the causes of action pleaded.

18 AS AND FOR A TWENTY-FIFTH, SEPARATE AND DISTINCT AFFIRMATIVE  
19 DEFENSE TO THE COMPLAINT AND EACH AND EVERY CAUSE OF ACTION THEREIN  
20 ALLEGED, this Answering Defendant alleges that the product in question was used after  
21 knowledge of the defect, if any, that existed therein.

22 AS AND FOR A TWENTY-SIXTH, SEPARATE AND DISTINCT AFFIRMATIVE  
23 DEFENSE TO THE COMPLAINT AND EACH AND EVERY CAUSE OF ACTION THEREIN  
24 ALLEGED, this Answering Defendant alleges that if Plaintiffs' claims were already litigated and  
25 resolved in any prior action, Plaintiffs' claims herein are barred based on the primary right and res  
26 judicata doctrines which prohibit splitting a single cause of action into successive suits, and  
27 seeking new recovery for injuries for which the plaintiffs were previously compensated by  
28 alleged joint tortfeasors.

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1 AS AND FOR A TWENTY-SEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
2 DEFENSE TO THE COMPLAINT AND EACH AND EVERY CAUSE OF ACTION THEREIN  
3 ALLEGED, this Answering Defendant alleges that Plaintiffs' claims are barred by the primary  
4 right doctrine as there is another action pending between the same parties on the same cause of  
5 action.

6 AS AND FOR A TWENTY-EIGHTH, SEPARATE AND DISTINCT AFFIRMATIVE  
7 DEFENSE TO THE COMPLAINT AND EACH AND EVERY CAUSE OF ACTION THEREIN  
8 ALLEGED, this Answering Defendant alleges that Plaintiffs' claims are barred by the principles  
9 of res judicata.

10 AND AS FOR A TWENTY-NINTH, SEPARATE AND DISTINCT AFFIRMATIVE  
11 DEFENSE, this answering defendant alleges that any injuries and damages, if any there be,  
12 alleged by Plaintiffs in the Complaint, were proximately caused by an unforeseeable allergic  
13 reaction to the product or products and/or one or more of its, or their, components.

14 AND AS FOR A THIRTIETH SEPARATE AND DISTINCT AFFIRMATIVE  
15 DEFENSE, this answering defendant alleges that the substantive law of Plaintiffs' domicile or a  
16 jurisdiction other than California, is applicable.

17 WHEREFORE, this answering defendant prays for judgment as follows:

- 18 1. That Plaintiffs take nothing by way of the Complaint or any cause of action thereof  
19 against this answering defendant;
- 20 2. That the Court award judgment in favor of this answering defendant;
- 21 3. For reasonable attorneys' fees;
- 22 4. For costs of suit and disbursements; and
- 23 5. For such other and further relief as the Court may deem proper.

24 Dated: January 24, 2008

IMAI, TADLOCK, KEENEY & CORDERY, LLP

25  
26  
27 By: /S/ Theodore T. Cordery  
Theodore T. Cordery  
Attorneys for Defendant  
28 RICH-TEX, INC.

EMARD DANOFF PORT TAMULSKI & PAETZOLD LLP

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Attorneys for Defendant

CROWLEY MARITIME CORPORATION

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

THOMAS JORGENSEN AND PATRICIA  
JORGENSEN

Plaintiffs,

vs.

A.W. CHESTERTON COMPANY, et al.

Defendants.

Case No.: CV 08 0903 EMC

**EXHIBIT A28 – A42 TO NOTICE OF  
REMOVAL OF ACTION UNDER 28  
U.S.C. §1442(a)(1)  
(FEDERAL OFFICER)**

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# **EXHIBIT 28**

1 MADELINE L. BUTY [SBN 157186]  
2 BUTY & CURLIANO LLP  
3 555 City Center  
4 555 - 12<sup>th</sup> Street, Suite 1280  
Oakland, California 94607  
Tel: 510.267.3000  
Fax: 510.267.0117

5 Attorneys for Defendant  
6 O. G. SUPPLY, INC.

7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF SAN FRANCISCO – UNLIMITED JURISDICTION**  
10

11 THOMAS JORGENSEN and PATRICIA  
12 JORGENSEN,

13 Plaintiffs,

14 v.

15 A. W. CHESTERTON COMPANY, et al.

16 Defendants.  
17  
18

No. 274494

**ANSWER TO COMPLAINT FOR  
DAMAGES - NEGLIGENCE; STRICT  
LIABILITY; PUNITIVE DAMAGES;  
LOSS OF CONSORTIUM (ASBESTOS)**

19  
20 COMES NOW defendant O. G. SUPPLY, INC., and answering the Complaint on file  
21 herein, admits, denies and alleges as follows:

22 This answering defendant denies each and every, all and singular, generally and specifically,  
23 the allegations in said Complaint.

24 Further answering said Complaint, this answering defendant denies that plaintiffs have  
25 sustained or will sustain, any injury, damage or loss due to any act or omission on the part of this  
26 answering defendant.

27 The following affirmative defenses are made on information and belief.  
28



1 AS A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT, this  
 2 answering defendant alleges that plaintiffs' Complaint, and each cause of action therein, fails to  
 3 state facts sufficient to constitute a cause of action against this answering defendant.

4 AS A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT,  
 5 this answering defendant alleges that plaintiffs' Complaint, and each cause of action therein, is  
 6 barred by the provisions of the Statute of Limitations, including, but not limited to C.C.P. §340.2.

7 AS A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT, this  
 8 answering defendant alleges that the acts, omissions and/or products, if any, of this answering  
 9 defendant were not the proximate cause of the losses, damages, and/or injuries, if any, alleged in  
 10 the Complaint.

11 AS A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT,  
 12 this answering defendant alleges that the sole and/or partial proximate cause of the incident was  
 13 due to the negligence, strict liability, and fraud of other persons and other parties, through whose  
 14 conduct this answering defendant is not responsible and this answering defendant requests that the  
 15 Court or trier of fact apportion comparative fault among those responsible persons and parties  
 16 under the doctrine of comparative negligence or comparative fault and/or based upon the doctrine  
 17 of equitable indemnity and contribution.

18 AS A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT, this  
 19 answering defendant alleges that plaintiffs themselves were careless and negligent in and about the  
 20 matters alleged in the Complaint, and that said carelessness and negligence proximately contributed  
 21 to the injuries, loss, and damages complained of, if any.

22 AS A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT, this  
 23 answering defendant alleges that plaintiffs failed subsequent to the occurrence described in the  
 24 Complaint to properly mitigate the damages and plaintiffs thereby are precluded from recovering  
 25 those damages which could have reasonably been avoided by the exercise of due care on the part of  
 26 plaintiffs.

1 AS A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT,  
 2 this answering defendant alleges that plaintiffs knowingly and voluntarily assumed the risk and  
 3 hazard, if any, incident to the activities in which plaintiffs were engaged at the time of the alleged  
 4 incident, and that said voluntary assumption of the risk upon the part of the plaintiffs proximately  
 5 caused and contributed to the injuries and damages to said plaintiffs, if any.

6 AS AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT,  
 7 this answering defendant alleges that plaintiffs and/or the plaintiffs' employers altered, abused or  
 8 misused the subject product.

9 AS A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT, this  
 10 answering defendant alleges that plaintiffs were guilty of laches with respect to plaintiffs' claim  
 11 and is therefore not entitled to invoke the aid of the equity jurisdiction of the Court.

12 AS A TENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT,  
 13 this answering defendant alleges that plaintiffs had accepted the work and in turn the alleged  
 14 asbestos-containing products of defendant and, therefore, is estopped from any claims arising from  
 15 the performance of the aforementioned work.

16 AS AN ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
 17 COMPLAINT, this answering defendant alleges that there were no express warranties made by this  
 18 answering defendant to plaintiffs.

19 AS A TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT,  
 20 this answering defendant alleges that plaintiffs failed to join all necessary and indispensable parties  
 21 to this action.

22 AS A THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
 23 COMPLAINT, this answering defendant alleges that the plaintiffs lack privity of contract with this  
 24 answering defendant and is thereby barred from claiming damages herein.

25 AS A FOURTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
 26 COMPLAINT, this answering defendant alleges that at all times herein mentioned plaintiffs were  
 27 employed and acting within the course and scope of employment, and as a consequence thereof,  
 28

1 plaintiffs' sole recourse for the damages now claimed is governed by Labor Code §3600 and  
2 following which serve to bar the present action.

3 AS A FIFTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
4 COMPLAINT, this answering defendant alleges that to the extent the Complaint asserts  
5 defendant's alleged "market share" liability, or "enterprise liability", the plaintiff's Complaint fails  
6 to state facts sufficient to constitute a cause of action against this answering defendant.

7 AS A SIXTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
8 COMPLAINT, this answering defendant alleges that plaintiffs' Complaint, and each cause of  
9 action therein, fails to state facts sufficient to sustain an award of punitive damages against this  
10 answering defendant.

11 AS A SEVENTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
12 COMPLAINT, and to each and every cause of action contained therein, this answering defendant  
13 alleges that, pursuant to the terms and provisions of California Civil Code §§1431.1 and 1431.2,  
14 the liability of this answering defendant, if any there be, for any non-economic damages of any  
15 party herein shall be allocated in direct proportion to the percentage of fault, if any, of this  
16 answering defendant.

17 AS AN EIGHTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
18 COMPLAINT, and each cause of action contained therein, defendant alleges that the state of the  
19 medical, scientific, and industrial knowledge, practice and procedure was at all relevant times such  
20 that defendant neither breached any alleged duty owed plaintiffs, nor knew, nor could have known,  
21 that the products alleged to have caused plaintiffs harm presented a foreseeable risk of harm to  
22 plaintiffs in the normal and expected use of such products.

23 AS A NINETEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
24 COMPLAINT, and each cause of action contained therein, defendant alleges that any product  
25 manufactured by this defendant, or work performed by this defendant, was consistent with the state  
26 of the art applicable at the time the work was performed or the product was manufactured.

1 AS A TWENTIETH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
2 COMPLAINT, this answering defendant alleges that the products complained of were  
3 manufactured, produced, supplied, sold, and distributed in mandatory conformity with  
4 specifications promulgated by the United States Government, and that any recovery by plaintiffs on  
5 the Complaint herein is barred in consequence of the exercise of those sovereign powers.

6 AS A TWENTY-FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
7 COMPLAINT, this answering defendant alleges that California is a seriously inconvenient forum  
8 that has no nexus to plaintiffs and/or plaintiff's injuries, if any, and therefore, it is improper for  
9 California to retain jurisdiction over this matter.

10 WHEREFORE, this answering defendant prays that plaintiffs take nothing by way of their  
11 Complaint; that this defendant be dismissed with its costs of suit incurred; and for such other and  
12 further relief as the Court deems just and proper.

13  
14 DATED: February 1, 2008

BUTY & CURLIANO LLP

15  
16 By: Madeline Buty  
17 MADELINE L. BUTY  
18 Attorneys for Defendant  
19 O. G. SUPPLY, INC.  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

I declare that:

I am employed in the County of Alameda, California. I am over the age of eighteen years and not a party to the within entitled cause; my business address is 555 – 12<sup>th</sup> Street, Suite 1280, Oakland, CA 94607.

On February 4, 2008, I served the following document(s) via LexisNexis File & Serve as described as:

**ANSWER TO COMPLAINT FOR DAMAGES - NEGLIGENCE; STRICT LIABILITY;  
PUNITIVE DAMAGES; LOSS OF CONSORTIUM (ASBESTOS)**

on recipients designated on the Transaction Receipt located on the LexisNexis File & Serve website.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 4, 2008, in Oakland, California.

EILEEN O'ROURKE  
Print Name

/S/EILEEN O'ROURKE  
Signature

# **EXHIBIT 29**

James P. Cunningham, No. 121406  
Gregory D. Meronek, No. 104705  
**CARROLL, BURDICK & McDONOUGH LLP**  
Attorneys at Law  
44 Montgomery Street, Suite 400  
San Francisco, CA 94104  
Telephone: 415.989.5900  
Facsimile: 415.989.0932  
Email: jcunningham@cbmlaw.com  
gmeronek@cbmlaw.com

Attorneys for Defendant  
WARREN PUMPS, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

THOMAS JORGENSEN and  
PATRICIA JORGENSEN,

Plaintiffs,

v.

A.W. CHESTERTON COMPANY, et  
al.,

Defendants.

**ASBESTOS**

No. CGC-08-274494

**OBJECTION TO ASSIGNMENT OF  
COMMISSIONER FOR TRIAL**

Complaint Filed: 1/3/08  
Trial Date: N/A

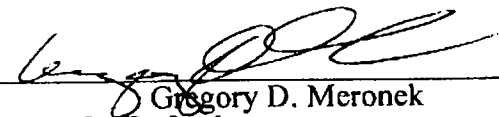
TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO THE  
PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Local Rule 6.1(c) Defendant  
**WARREN PUMPS, LLC** hereby timely objects and refuses to stipulate that any trial or  
non-discovery matter in this case be heard and/or decided by a Commissioner.

Dated: January 3, 2008

CARROLL, BURDICK & McDONOUGH LLP

By

  
Gregory D. Meronek  
Attorneys for Defendant  
WARREN PUMPS, LLC

CBM-SF391931.1

OBJECTION TO ASSIGNMENT OF COMMISSIONER FOR TRIAL

# **EXHIBIT 30**



1 James P. Cunningham, No. 121406  
Gregory D. Meronek, No. 104705  
2 **CARROLL, BURDICK & McDONOUGH LLP**  
Attorneys at Law  
3 44 Montgomery Street, Suite 400  
San Francisco, CA 94104  
4 Telephone: 415.989.5900  
Facsimile: 415.989.0932  
5 Email: jcunningham@cbmlaw.com  
gmeronek@cbmlaw.com

6 Attorneys for Defendant  
7 WARREN PUMPS, LLC

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN FRANCISCO

10  
11 THOMAS JORGENSEN and  
PATRICIA JORGENSEN,

12 Plaintiffs,

13 v.

14 A.W. CHESTERTON COMPANY, et  
15 al.,

16 Defendants.

**ASBESTOS**

No. CGC-08-274494

**DEMAND FOR JURY TRIAL**

Complaint Filed: 1/3/08  
Trial Date: N/A

17  
18 TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO THE  
19 PARTIES AND THEIR ATTORNEYS OF RECORD:

20 PLEASE TAKE NOTICE that Defendant **WARREN PUMPS, LLC** hereby  
21 demands a jury trial in the above-entitled action.

22 Dated: January 31, 2008

23 CARROLL, BURDICK & McDONOUGH LLP

24  
25 By 

26 Gregory D. Meronek  
Attorneys for Defendant  
27 WARREN PUMPS, LLC  
28

CBM-SFSF391930.1

**DEMAND FOR JURY TRIAL**

# **EXHIBIT 31**

1 James P. Cunningham, No. 121406  
Gregory D. Meronek, No. 104705  
2 **CARROLL, BURDICK & McDONOUGH LLP**  
Attorneys at Law  
3 44 Montgomery Street, Suite 400  
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5 Email: jcunningham@cbmlaw.com  
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6 Attorneys for Defendant  
7 WARREN PUMPS, LLC

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN FRANCISCO

10  
11 THOMAS JORGENSEN and  
PATRICIA JORGENSEN,

12 Plaintiffs,

13 v.

14 A.W. CHESTERTON COMPANY, et  
15 al.,

16 Defendants.

**ASBESTOS**

No. CGC-08-274494

**ANSWER TO COMPLAINT FOR DAMAGES**

Complaint Filed: 1/3/08  
Trial Date: N/A

17  
18 **GENERAL DENIAL**

19 For its answer to the unverified Complaint filed by Plaintiffs, Defendant  
20 WARREN PUMPS, LLC ("Defendant"), answering solely on its own behalf and for no  
21 other person or party, files this general denial pursuant to Code of Civil Procedure section  
22 431.30(d) and hereby denies each and every, all and singular, generally and specifically,  
23 of the allegations contained in Plaintiffs' Complaint, and further specifically denies that  
24 Plaintiffs have been injured in any way or damaged in any sum or amount or manner or  
25 way alleged, and specifically further denies any liability or fault whatsoever with respect  
26 to the matters complained of in Plaintiffs' Complaint.

27  
28 CBM-SFSF391929.1

**ANSWER TO COMPLAINT FOR DAMAGES**

**AFFIRMATIVE DEFENSES**

As and for its separate, distinct, and affirmative defenses to Plaintiff's Complaint, and to each cause of action thereof, this answering Defendant alleges as follows:

**FAILURE TO STATE A CAUSE OF ACTION**

1. Plaintiffs' Complaint fails to state facts sufficient to constitute a cause of action upon which relief may be granted against this answering Defendant.

**STATUTE OF LIMITATIONS**

2. Defendant alleges on information and belief that:

A. Plaintiffs' Complaint is barred by the applicable statute of limitations pursuant to Code of Civil Procedure sections 337, 338, 339, 340, 340.2, 343, 353.1, 361, and/or 474, and California Commercial Code section 2725; and/or

B. The causes of action in Plaintiffs' Complaint arose outside the State of California, while Plaintiffs were non-residents, pursuant to the applicable statutes of limitations or statute(s) of repose where Plaintiffs were then residing or working, and Plaintiffs' Complaint is barred by the provisions of those statutes and by section 361 of the California Code of Civil Procedure.

**ASSUMPTION OF RISK**

3. Defendant alleges on information and belief that Plaintiffs voluntarily and knowingly assumed the alleged risks and alleged hazards incident to the alleged operations, acts, and conduct at the times and places alleged in Plaintiffs' Complaint, and Plaintiffs' said acts proximately caused and contributed to Plaintiffs' alleged injuries and damages, if any there were.

**FAILURE TO FOLLOW WARNINGS**

4. On information and belief, Defendant alleges that Plaintiffs were advised, informed, and warned of any potential hazards and/or dangers, if any there were, associated with the normal or foreseeable use, handling, and storage of the products,

1 substances, and equipment described in Plaintiffs' Complaint, and Plaintiffs failed to  
2 follow such warnings.

### 3 COMPARATIVE NEGLIGENCE

4 5. Defendant alleges upon information and belief that:

5 A. At the time and places mentioned in Plaintiffs' Complaint, Plaintiffs  
6 were careless and negligent in and about the matters alleged in said Complaint, which  
7 carelessness and negligence caused and contributed, to the extent of one hundred percent,  
8 to any injuries and damages allegedly sustained by Plaintiffs, if any there were; and

9 B. In the event of any judgment or verdict in favor of Plaintiffs herein,  
10 said judgment or verdict must be reduced to the extent that said carelessness and  
11 negligence of Plaintiffs caused or contributed to the alleged injuries and damages  
12 allegedly sustained by Plaintiffs, if any there were.

### 13 CONDUCT OF OTHERS

14 6. Defendant alleges that any loss, injury, or damage to Plaintiffs was  
15 proximately caused or contributed to by the negligent or other tortious acts, omissions,  
16 and/or fault of other persons or entities which Defendant neither controlled nor had the  
17 right to control, and that no particular damages of Plaintiffs was caused by acts or  
18 omissions of this Defendant.

### 19 NOT A SUCCESSOR-IN-INTEREST

20 7. Defendant denies any and all liability to the extent that Plaintiffs assert  
21 defendant's alleged liability as a successor, successor in business, successor in product  
22 line or a portion thereof, assign, predecessor, predecessor in business, predecessor in  
23 product line or a portion thereof, parent, alter-ego, subsidiary, wholly or partially owned  
24 by, or the whole or partial owner of or member in an entity researching, studying,  
25 manufacturing, fabricating, designing, labeling, assembling, distribution, leasing, buying,  
26 offering for sale, selling, inspecting, servicing, installing, contracting for installation,  
27 repairing, marketing, warranting, rebranding, manufacturing for others, packaging and  
28 advertising a certain substance, the generic name of which is asbestos.

**LACK OF LEGAL CAPACITY TO SUE**

8. Defendant alleges that Plaintiffs lack the legal capacity to sue and is not a real party-in-interest.

**PROPOSITION 51**

9. Defendant alleges that there are other persons, parties and/or defendants who are at fault and proximately caused Plaintiffs' injuries, if any. If this answering Defendant is responsible to Plaintiffs, which responsibility is expressly denied, this answering Defendant is only liable for its proportionate share of non-economic damages, if any, as set forth in *Civil Code* section 1431.2.

**MODIFICATION/ALTERATION OF PRODUCT**

10. On information and belief, Defendant alleges that the products which allegedly injured Plaintiffs was altered, changed, or otherwise modified by parties, individuals, or entities other than this answering Defendant, and said modifications, changes or alterations were a proximate cause of the damages alleged by Plaintiffs, if any there were.

**MISUSE AND ABUSE**

11. Prior to and at the time of the alleged injuries, on information and belief, Defendant alleges that the products which allegedly injured Plaintiffs were misused and abused and were not being used in the manner in which they were intended to be used. Such misuse and abuse caused and contributed to the injuries and damages complained of by Plaintiffs, if any there were.

**SPOILIATION OF EVIDENCE**

12. On information and belief, Defendant alleges that Plaintiffs and/or Plaintiffs' agents negligently or intentionally failed to preserve, and permitted the spoliation of, material evidence, including but not limited to the products which Plaintiffs allege gives rise to Plaintiffs' Complaint herein. Such conduct bars Plaintiffs' action and/or gives rise to liability on the part of Plaintiffs for damages payable to this answering Defendant.

**NOT A SUBSTANTIAL FACTOR**

13. Defendant alleges on information and belief that Plaintiffs were not exposed to any product distributed by Defendant that was a substantial factor in causing any injury, damage, or loss complained of, and, therefore, this Defendant may not be held liable to Plaintiffs as alleged.

**NO EXPOSURE**

14. Defendant alleges on information and belief that Plaintiffs were not exposed to a product distributed by Defendant, and if he was, such exposure was so minimal as to be insufficient to cause the injury, damage, or loss complained of.

**FAILURE TO MITIGATE DAMAGES**

15. Defendant alleges that Plaintiffs have failed to mitigate his losses, injuries, or damages and is barred from recovering any damages which could have been avoided by reasonable mitigation efforts.

**LACK OF NOTICE**

16. Defendant alleges that Plaintiffs failed to give reasonable, timely, sufficient and adequate notice to this answering Defendant of the alleged liability, damage or injury, if any.

**LACHES**

17. Defendant alleges that Plaintiffs have unreasonably delayed in the bringing of this action, without good cause therefore. Said delay has directly resulted in prejudice to this answering Defendant, and, therefore, this action is barred by laches.

**UNCLEAN HANDS**

18. Defendant alleges that Plaintiffs are precluded from maintaining any cause of action against this answering Defendant because Plaintiffs' actions preclude equitable relief under the doctrine of unclean hands.

**SOPHISTICATED USER**

19. At all times relevant hereto, Defendant alleges that Plaintiffs' employer or employers, by reason of the advice, information, warnings, and use, handling, and

1 storage information given to them, and by reason of their own long-standing and  
2 continuous experience with the products, substances, and equipment referred to in  
3 Plaintiffs' Complaint, are and were sophisticated users, handlers, and storers of any and  
4 all such products, substances, and equipment and thereby acquired a separate and  
5 affirmative duty to warn, advise and inform Plaintiffs of any potential harmful effects  
6 from the mishandling, misstorage and/or misuse of the subject product, if any. Said  
7 employer's failure to so provide and/or so warn Plaintiffs was a superseding and  
8 intervening cause of Plaintiffs' injuries, if any there were.

9 **NO WARRANTY**

10 20. This answering Defendant gave no warranties, either express or implied,  
11 to Plaintiffs, and neither Plaintiffs nor anyone else ever notified this answering Defendant  
12 of any claim of breach of warranty resulting in Plaintiffs' alleged injuries.

13 **LACK OF PRIVACY**

14 21. At all times and places mentioned in Plaintiffs' Complaint, Defendant  
15 alleges that Plaintiffs were not in privity of contract with this answering Defendant and  
16 said lack of privity bars Plaintiffs' recovery herein upon any theory of warranty.

17 **VAGUENESS OF DEFECT STANDARDS**

18 22. The State of California's judicially created definitions of  
19 "manufacturing" and "design defects" and the standards for determining whether there has  
20 been an actionable failure to warn are unconstitutional in that, among other things, they  
21 are void for vagueness and place an undue burden upon interstate commerce, as well as  
22 constitute an impermissible effort to regulate in an area that has previously been  
23 preempted by the federal government.

24 **NO MARKET SHARE OR ENTERPRISE LIABILITY**

25 23. Defendant alleges on information and belief that each and every cause of  
26 action of Plaintiffs' Complaint fails to state facts sufficient to constitute a cause of action  
27 under Sindell, "market share", or any theory of enterprise liability. Defendant further  
28 alleges on information and belief that Plaintiffs have failed to join as Defendants in this



1 action the producers of a substantial market share of the product or products which  
2 allegedly injured Plaintiffs.

3 **WORKERS' COMPENSATION — EXCLUSIVE REMEDY**

4 24. Defendant alleges on information and belief that:

5 A. Plaintiffs have received or will receive disability and medical  
6 benefits under a workers' compensation law, or similar laws, from Plaintiffs' employers  
7 or former employers or their workers' compensation or similar insurers, on account of the  
8 injuries and damages allegedly sustained by Plaintiffs which give rise to this lawsuit, if  
9 any there were and therefore Plaintiffs' claims are barred by the statute of limitations per  
10 45 U.S.C. section 56 and the exclusive remedy provisions of California *Labor Code*  
11 section 3601, et seq.;

12 B. At the time of any alleged injury, each and every of Plaintiffs'  
13 employers and former employers was careless and negligent in and about the matters  
14 alleged in Plaintiffs' Complaint, and said carelessness and negligence of each and every of  
15 said employers contributed directly and proximately to any alleged injuries or damages  
16 sustained by Plaintiffs and/or any or all of said employers; and

17 C. Any judgment or verdict that might be rendered in favor of  
18 Plaintiffs herein should be reduced by the amount of all such payments by said employers  
19 or insurers, and that each of said employers or insurers should be barred from any  
20 recovery by lien or otherwise in connection with this matter under the authority of *Witt v.*  
21 *Jackson*, 57 Cal.2d 57 [17 Cal.Rptr. 369, 360 P.2d 641] (1961).

22 **GOVERNMENT SPECIFICATIONS**

23 25. Defendant alleges that it acted solely under the specifications of the U.S.  
24 Government and properly performed all work thereunder according to such specifications  
25 and that this Defendant is therefore immune to suit under the government contract  
26 doctrine as set forth in *Boyle v. United Tech. Corp.* (1988) 487 U.S. 500, and *Sundstrom v.*  
27 *McDonnell Douglas Corp.* (N.D. Cal. 1993) 816 F.Supp. 587; any defect in said products  
28

1 was caused by deficiencies in the specifications supplied to Defendant, which deficiencies  
2 were neither known nor discoverable to Defendant with the exercise of reasonable care.

### 3 STATE OF THE ART

4 26. The state of the medical, scientific, and industrial knowledge and  
5 practices was at all material times such that this answering Defendant neither breached  
6 any alleged duty owed to Plaintiffs, nor knew, or could have known, that the product(s) it  
7 allegedly distributed presented a foreseeable risk of harm to Plaintiffs in the normal and  
8 expected use of such a product. Any products, substances, or equipment manufactured,  
9 formulated, sold, or distributed by this answering Defendant were made consistent with  
10 the state of the art applicable to said products, substances, or equipment at the time of  
11 their manufacture, sale, formulation, or distribution.

### 12 APPLICABLE LAW

13 27. Defendant alleges that as between Plaintiffs and this answering  
14 Defendant, the law applicable to this action is the law as it existed during the period this  
15 answering Defendant engaged, if at all, in the distribution or sale of the product which  
16 Plaintiffs claim caused injury. It is unlawful, inequitable, and in violation of this  
17 answering Defendant's contractual, statutory, and constitutional rights to apply principles  
18 of law other than or in a manner different from those which existed for the period in  
19 which this answering Defendant sold or distributed the products to which Plaintiffs claim  
20 exposure.

### 21 OFFSET

22 28. This answering Defendant is entitled to an offset regarding all settlements  
23 entered into, or to be entered into between Plaintiffs and any person or entity, including  
24 Defendants, relating to their claims and allegations in this proceeding.

### 25 FAILURE TO JOIN INDISPENSABLE PARTIES

26 29. Defendant alleges Plaintiffs failed to join indispensable parties pursuant  
27 to *Code of Civil Procedure* section 389.

**PUNITIVE DAMAGES — FAILURE TO STATE A CAUSE OF ACTION**

30. Defendant alleges that the Complaint in its entirety, and each cause of action therein, fails to state a cause of action against Defendant for punitive or exemplary damages.

**UNCONSTITUTIONALITY OF PUNITIVE DAMAGES**

31. Defendant alleges that, to the extent that it seeks exemplary or punitive damages pursuant to California *Civil Code* section 3294, the Complaint violates Defendant's right to procedural due process under the Fourteenth Amendment of the United States Constitution, and Article I, section 7, of the California State Constitution, and therefore fails to state a cause of action upon which either punitive or exemplary damages can be awarded.

**PUNITIVE DAMAGES — EXCESSIVE FINES**

32. Defendant alleges that, to the extent that it seeks punitive or exemplary damages pursuant to California *Civil Code* section 3294, the Complaint violates Defendant's right to protection from "excessive fines" as provided in the Eighth Amendment of the United States Constitution and Article I, section 17 of the Constitution of the State of California, and violates Defendant's right to substantive due process as provided in the Fifth and Fourteenth Amendments of the United States Constitution and the Constitution of the State of California, and therefore fails to state facts sufficient to support an award of either punitive or exemplary damages.

**VIOLATION OF COMMERCE CLAUSE**

33. Defendant alleges that the Commerce Clause of the United States Constitution, U.S. Const. art. I, section 8, cl. 3, precludes the application of a state statute to commerce that takes place wholly outside of a state's borders, whether or not the commerce has effects within the state; and protects against inconsistent legislation arising from the projection of one state regulatory regime into the jurisdiction of another state.

**PLEAS IN ABATEMENT**

34. Defendant alleges as pleas in abatement:

1 A. That another action is pending between the same parties on the  
2 same cause of action; and

3 B. That Plaintiff has improperly joined parties in this action.

4 WHEREFORE, this answering Defendant prays for judgment and relief as  
5 follows:

6 **PRAYER**

7 1. That Plaintiffs take nothing by reason of Plaintiffs' Complaint on file  
8 herein;

9 2. For judgment in favor of this answering Defendant and against Plaintiffs  
10 on each and every cause of action of Plaintiffs' Complaint;

11 3. That this answering Defendant be awarded its costs of suit, including its  
12 attorneys' fees;


13 4. That this answering Defendant be awarded appropriate credits;

14 5. That this answering Defendant be awarded appropriate credits and setoffs  
15 arising out of any payment of workers' compensation settlements as alleged above; and

16 6. That this answering Defendant be awarded such other and further relief as  
17 the Court may deem proper and equitable.

18  
19 Dated: January 31, 2008

20 CARROLL, BURDICK & McDONOUGH LLP

21  
22 By   
23 Gregory D. Meronek  
24 Attorneys for Defendant  
25 WARREN PUMPS, LLC  
26  
27  
28

1 *Thomas Jorgensen, et al. v. A.W. Chesterton Co., et al.*  
2 San Francisco County Superior Court, Action No. CGC-078-274494

3 **PROOF OF SERVICE BY ELECTRONIC TRANSMISSION**

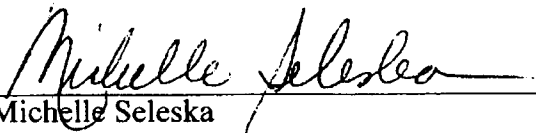
4 I, the undersigned, declare: that I am, and was at the time of service of the  
5 documents herein referred to, over the age of 18 years, and am not a party to the action;  
6 and I am employed in the County of San Francisco, California. My business address is 44  
7 Montgomery Street, Suite 400, San Francisco, CA 94104.

8 On the date executed below, I electronically served the document(s) via  
9 LexisNexis File & Serve described as:

10 **ANSWER TO COMPLAINT FOR PERSONAL INJURY;**  
11 **DEMAND FOR JURY TRIAL; AND**  
12 **OBJECTION TO ASSIGNMENT OF COMMISSIONER FOR TRIAL**

13 on recipients designated on the Transaction Receipt located on the LexisNexis File &  
14 Serve website.

15 I declare under penalty of perjury pursuant to the laws of the State of  
16 California, that the foregoing is true and correct, and was executed on February 1, 2008, at  
17 San Francisco, California.

18   
19 \_\_\_\_\_  
20 Michelle Seleska

# **EXHIBIT 32**

1 Evanthia M. Spanos, CSB #111178  
2 BERRY & BERRY  
3 A Professional Corporation  
4 2930 Lakeshore  
5 Oakland, California 94610  
6 Telephone: (510) 250-0220  
7 Facsimile: (510) 835-5117  
8 Designated Defense Counsel

**FILED**  
San Francisco County Superior Court  
JAN 31 2008  
BY: GORDON W. L. Clerk  
Deputy Clerk

9  
10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11  
12 IN AND FOR THE COUNTY OF SAN FRANCISCO

13 THOMAS JORGENSEN,

14 Plaintiff(s),

15 vs.

16 AW CHESTERTON, et al.,

17 Defendants.

No 274494

STIPULATION RE: RELEASE OF RECORDS,  
AND ORDER

18 Plaintiff above named and all defendants do hereby stipulate and agree to entry of an order  
19 of this Court compelling release of all records in the possession, custody and/ or control of the  
20 Custodian of Records, National Personnel Records Center, St. Louis, Missouri, including but not limited  
21 to, medical, employment, workers' compensation and military records pertaining to Thomas  
22 Jorgensen; Place of Birth: \_\_\_\_\_; Employed at: n/a from: n/a; Branch of  
23 Military Service: US Navy from: 1965-67. The Federal Privacy Act has been specifically considered in  
24 entering this stipulation.

25 It is further stipulated that all records be released directly to RECORDTRAK, 100 Webster  
26 Street, Oakland, CA 94607 for copying, without the necessity of a formal motion and that  
27 RECORDTRAK is required by law to send any records they obtain to plaintiff's counsel for a first look

28 ///

///

pursuant to General Order No. 29 or, if applicable, General Order No. 140 of the San Francisco Superior

1 Court. [This case is subject to General Order No. 140 of the San Francisco Superior Court.]

2 Dated: 1/22/08

LEVIN SIMES & KAISER

3  
4 By [Signature]

Attorney for Plaintiff

5  
6 Dated: 1-28-08

BERRY & BERRY  
A Professional Corporation

7  
8 By [Signature]

Evanthia Spanos, Esquire  
Designated Defense Counsel

9  
10  
11 **ORDER**

12  
13 IT IS HEREBY ORDERED that the custodian of Records, National Personnel Records Center,  
14 St. Louis, Missouri, produce all records in his possession, custody and/or control pertaining to; Thomas  
15 Jorgensen including but not limited to, medical, employment, and Workers' Compensation records, all  
16 pursuant to 5 U.S.C. Section 522a(b)11. The Federal Privacy Act has been specifically considered in  
17 ordering the release of these records and this order is made pursuant to that Act. IT IS FURTHER  
18 ORDERED the records be released directly to RECORDTRAK, and that the copies of any records  
19 received will be provided to plaintiff's counsel for a first look pursuant to General Order 129 or, if  
20 applicable, General Order No. 140 of the San Francisco Superior Court.

21 Dated: 1/29/08

22 [Signature]  
Judge of the Superior Court

23 The language of this stipulation has been authorized by San Francisco Superior Court. No alteration of or deletion to  
24 this form may be made by plaintiff or plaintiff's attorney without order of the San Francisco Superior Court on  
25 noticed motion.

26 ///



# **EXHIBIT 33**

JAN. 22. 2008 5:24PM

LSK:G

NO. 9782 P. 1/4

1 Evanthia M. Spanos, CSB #111178  
 2 BERRY & BERRY  
 3 A Professional Corporation  
 4 2930 Lakeshore  
 5 Oakland, California 94610  
 6 Telephone: (510) 250-0220  
 7 Facsimile: (510) 835-5117  
 8 Designated Defense Counsel

**FILED**  
 San Francisco County Superior Court  
 JAN 31 2003  
 BY: GORDON, J. L. Clerk  
 Deputy Clerk

9  
 10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 11  
 12 IN AND FOR THE COUNTY OF SAN FRANCISCO

13 THOMAS JORGENSEN,

14 Plaintiff(s),

15 vs.

16 AW CHESTERTON, et al.,

17 Defendants.

No 274494

STIPULATION RE: RELEASE OF RECORDS,  
 AND ORDER

18 Plaintiff above named and all defendants do hereby stipulate and agree to entry of an order  
 19 of this Court compelling release of all records in the possession, custody and/ or control of the  
 20 Custodian of Records, National Personnel Records Center, St. Louis, Missouri, including but not limited  
 21 to, medical, employment, workers' compensation and military records pertaining to Thomas  
 22 Jorgensen; Place of Birth: \_\_\_\_\_; Employed at: n/a from: n/a; Branch of  
 23 Military Service: US Navy from: 1965-67. The Federal Privacy Act has been specifically considered in  
 24 entering this stipulation.

25 It is further stipulated that all records be released directly to RECORDTRAK, 100 Webster  
 26 Street, Oakland, CA 94607 for copying, without the necessity of a formal motion and that  
 27 RECORDTRAK is required by law to send any records they obtain to plaintiff's counsel for a first look

28 ///

///

pursuant to General Order No. 29 or, if applicable, General Order No. 140 of the San Francisco Superior

Exhibit N-3 to General Order No. 129

-1-

JAN. 22. 2008 5:24PM

LSK:pc

NO. 9782 P. 2/4

1 Court. [This case is subject to General Order No. 140 of the San Francisco Superior Court.]

2 Dated: 1/22/08

LEVIN SIMES & KAISER

3 By [Signature]

4 Attorney for Plaintiff

5  
6 Dated: 1-24-08

BERRY & BERRY  
A Professional Corporation

7  
8 By [Signature]

9 Evanthia Spanos, Esquire  
10 Designated Defense Counsel

11 ORDER

12 IT IS HEREBY ORDERED that the custodian of Records, National Personnel Records Center,  
13 St. Louis, Missouri, produce all records in his possession, custody and/or control pertaining to; Thomas  
14 Jorgensen including but not limited to, medical, employment, and Workers' Compensation records, all  
15 pursuant to 5 U.S.C. Section 522a(b)11. The Federal Privacy Act has been specifically considered in  
16 ordering the release of these records and this order is made pursuant to that Act. IT IS FURTHER  
17 ORDERED the records be released directly to RECORDTRAK, and that the copies of any records  
18 received will be provided to plaintiff's counsel for a first look pursuant to General Order 129 or, if  
19 applicable, General Order No. 140 of the San Francisco Superior Court.

20  
21 Dated: 1/30/08

22 [Signature]  
Judge of the Superior Court

BRUCE E. CHAN

23 The language of this stipulation has been authorized by San Francisco Superior Court. No alteration of or deletion to  
24 this form may be made by plaintiff or plaintiff's attorney without order of the San Francisco Superior Court on  
25 noticed motion.

26 ///

27  
28 Exhibit N-3 to General Order No. 129

-2-

# **EXHIBIT 34**

1 PRINDLE, DECKER & AMARO LLP  
2 WILLIAM M. HAKE, ESQ. (Bar No. 110956)  
3 369 Pine Street, Suite 800  
San Francisco, California 94104  
Telephone: (415) 788-8354

4 COOLEY MANION JONES LLP  
5 21 Custom House Street  
6 Boston, MA 02110-3536  
Telephone: (617) 737-3100

7 Attorneys for Defendant,  
8 A.W. CHESTERTON COMPANY

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 IN AND FOR THE COUNTY OF SAN FRANCISCO  
11

12 THOMAS JORGENSEN et, al.,

13 Plaintiff(s),

14 vs.

15 A.W. CHESTERTON COMPANY,

16 Defendant(s).  
17  
18  
19  
20


CASE NO. CGC-07-274494

DEFENDANT A.W. CHESTERTON  
COMPANY'S OBJECTION TO  
STIPULATION OF HEARING BY  
COMMISSIONER

21 PLEASE TAKE NOTICE that defendant A.W. CHESTERTON COMPANY does  
22 not stipulate and hereby objects to any Discovery Commissioner hearing any discovery  
23 matter in this action pursuant to San Francisco Superior Court Rules.

24 DATED: January 29, 2008

PRINDLE, DECKER & AMARO LLP

25  
26   
27 WILLIAM M. HAKE, ESQ.  
Attorneys for Defendant,  
28 A.W. CHESTERTON COMPANY

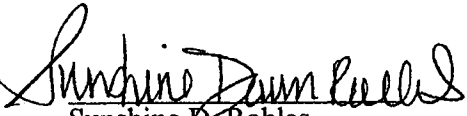
**PROOF OF SERVICE BY ELECTRONIC TRANSMISSION**

I, Sunshine D. Robles, declare as follows:

That I am, and was as the time of service of the documents herein referred to, over the age of 18 years, and not a party to the action; and I am employed in the County of San Francisco, California. My business address is 369 Pine Street, Suite 800, San Francisco, California 94104. On January 30, 2008, I electronically served the document(s) via LexisNexis File & Serve described as:

**DEFENDANT A.W. CHESTERTON COMPANY'S OBJECTION TO  
STIPULATION OF HEARING BY COMMISSIONER**

On the recipients designated on the Transaction Receipt located on the LexisNexis File & Serve website. I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct and was executed on January 30, 2008 at San Francisco, California.

  
Sunshine D. Robles

# **EXHIBIT 35**

1 PRINDLE, DECKER & AMARO LLP  
2 WILLIAM M. HAKE, ESQ. (Bar No. 110956)  
3 369 Pine Street, Suite 800  
San Francisco, California 94104  
Telephone: (415) 788-8354

4 COOLEY MANION JONES LLP  
5 21 Custom House Street  
6 Boston, MA 02110-3536  
Telephone: (617) 737-3100

7 Attorneys for Defendant,  
8 A.W. CHESTERTON COMPANY

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 IN AND FOR THE COUNTY OF SAN FRANCISCO

11  
12 THOMAS JORGENSEN et, al.,  
13 Plaintiff(s),  
14 vs.  
15 A.W. CHESTERTON COMPANY,  
16 Defendant(s).


CASE NO. CGC-07-274494

DEFENDANT A.W. CHESTERTON  
COMPANY'S DEMAND FOR TRIAL  
BY JURY AND ESTIMATE OF  
LENGTH OF TRIAL

17  
18  
19  
20 TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO ALL PARTIES  
21 HEREIN:

22 PLEASE TAKE NOTICE that defendant A.W. CHESTERTON COMPANY hereby  
23 demands a trial by jury in the above-entitled action and estimates that the length of trial  
24 will be six to eight weeks in duration.

25 DATED: January 29, 2007

PRINDLE, DECKER & AMARO LLP  
  
WILLIAM M. HAKE, ESQ.  
Attorneys for Defendant,  
A.W. CHESTERTON COMPANY



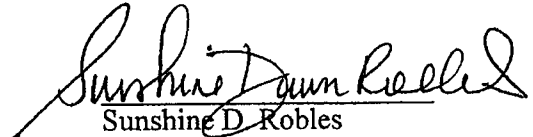
**PROOF OF SERVICE BY ELECTRONIC TRANSMISSION**

I, Sunshine D. Robles, declare as follows:

That I am, and was as the time of service of the documents herein referred to, over the age of 18 years, and not a party to the action; and I am employed in the County of San Francisco, California. My business address is 369 Pine Street, Suite 800, San Francisco, California 94104. On January 30, 2008, I electronically served the document(s) via LexisNexis File & Serve described as:

**DEFENDANT A.W. CHESTERTON COMPANY'S DEMAND FOR TRIAL BY JURY AND ESTIMATE OF LENGTH OF TRIAL**

On the recipients designated on the Transaction Receipt located on the LexisNexis File & Serve website. I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct and was executed on January 30, 2008 at San Francisco, California.

  
Sunshine D. Robles

# **EXHIBIT 36**

1 PRINDLE, DECKER & AMARO LLP  
2 WILLIAM M. HAKE, ESQ. (Bar No. 110956)  
3 369 Pine Street, Suite 800  
4 San Francisco, California 94104  
5 Telephone: (415) 788-8354

6 COOLEY MANION JONES LLP  
7 21 Custom House Street  
8 Boston, MA 02110-3536  
9 Telephone: (617) 737-3100

10 Attorneys for Defendant,  
11 A.W. CHESTERTON COMPANY

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 IN AND FOR THE COUNTY OF SAN FRANCISCO

14 THOMAS JORGENSEN et, al.,

15 Plaintiff(s),

16 vs.

17 A.W. CHESTERTON COMPANY,

18 Defendant(s).

CASE NO. CGC 07-274494

**DEFENDANT A.W. CHESTERTON  
COMPANY'S ANSWER TO  
COMPLAINT FOR DAMAGES,  
NEGLIGENCE, STRICT LIABILITY,  
PUNITIVE DAMAGES, LOSS OF  
CONSORTIUM, (ASBESTOS)**

19  
20  
21 COMES NOW, Defendant, A.W. CHESTERTON COMPANY, for itself alone,  
22 and in answer to plaintiffs' Complaint on file herein, and to each and every cause of  
23 action thereof, and by virtue of the provisions of CCP Section 431.30, now files its  
24 general denial to said Complaint and to each and every cause of action thereof, and in  
25 answer to all the allegations thereof, denies that the plaintiffs have been damaged in  
26 any sum or sums whatsoever, or at all, by any act or omission of this answering  
27 defendant.

28 ///

1 AS AND FOR A FIRST, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, this  
2 answering defendant alleges that the Complaint and each cause of action therein, fails  
3 to state facts sufficient to constitute a cause of action.

4 AS AND FOR A SECOND, SEPARATE AND DISTINCT AFFIRMATIVE  
5 DEFENSE, this answering defendant alleges that plaintiffs are barred from recovery by  
6 the applicable statute of limitations, including but not limited to California Code of Civil  
7 Procedure Sections 319, 320, 337.1, 337.15, 338, 399, 340 (3), 340.2, 343, and  
8 California Commercial Code Sections 2725 (1) and 2725(2).

9 AS AND FOR A THIRD, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,  
10 this answering defendant alleges that the plaintiffs were themselves negligent and  
11 careless in and about the matters and events alleged in the Complaint, and said  
12 negligence proximately contributed to the alleged damages, if any there were, and as a  
13 result thereof, the principles of equitable comparative negligence must be applied to bar  
14 plaintiffs' action.

15 AS AND FOR A FOURTH, SEPARATE AND DISTINCT AFFIRMATIVE  
16 DEFENSE, this answering defendant alleges that the injuries, loss and/or damages  
17 alleged in said Complaint by plaintiffs, if any there was, were caused by the  
18 carelessness and negligence on the part of the remaining defendants in that said  
19 carelessness and negligence on the part of said remaining defendants proximately  
20 contributed to the happening of the subject event and the injuries, loss or damages  
21 alleged by the plaintiffs' herein, and that any judgment rendered against this answering  
22 defendant be reduced or nullified to the extent of such negligence and carelessness on  
23 the part of the remaining defendants as aforesaid.

24 AS AND FOR A FIFTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,  
25 this answering defendant alleges that the plaintiffs' injuries and damages which may  
26 have been sustained as a result of events mentioned in the Complaint, if any there was,  
27 were proximately caused by the carelessness and negligence of plaintiffs and the  
28 remaining defendants, and that the respective negligence of each said party to this suit

1 ought to be equitably apportioned among the parties hereto.

2 AS AND FOR A SIXTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,  
3 this answering defendant alleges that at the time of the occurrence of the matters  
4 mentioned in the plaintiffs' Complaint, the plaintiffs themselves had knowledge of those  
5 matters alleged in the Complaint and plaintiffs did, with said knowledge, voluntarily and  
6 of their free will and act, place themselves in an unsafe and dangerous position and by  
7 reason thereof, plaintiffs did assume the risk and all risks ordinarily incident thereto.

8 AS AND FOR A SEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
9 DEFENSE, THIS ANSWERING DEFENDANT alleges that the products referred to in  
10 the Complaint were not used in a safe and normal manner or in the manner in which  
11 they were intended to be used, and that such misuse proximately contributed to the  
12 injuries to plaintiffs and the damages and losses resulting therefrom, if any there were,  
13 and bars plaintiffs' recovery herein.

14 AS AND FOR A EIGHTH, SEPARATE AND DISTINCT AFFIRMATIVE  
15 DEFENSE, this answering defendant alleges that prior to and at the time referred to in  
16 plaintiffs' Complaint, the products referred to in the Complaint were abused, altered,  
17 modified, or changed in a manner that was not reasonably foreseeable, that such  
18 abuse, modification, alteration, or change proximately contributed to the injuries to  
19 plaintiffs and the damages and losses resulting therefrom, if any there were, and bars  
20 plaintiffs' recovery herein.

21 AS AND FOR A NINTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,  
22 this answering defendant alleges that at all times herein mentioned, plaintiffs were in  
23 the course and scope of their employment and that the injuries sustained by plaintiffs, if  
24 any there were, were caused or contributed to by the carelessness and negligence of  
25 plaintiffs' employers, entitling this answering defendant to a set-off in the amount equal  
26 to the extent of payments made by said employers' workers' compensation carrier.

27 AS AND FOR A TENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
28 DEFENSE, this answering defendant alleges that the plaintiffs' employers were

1 negligent and careless in and about the matters alleged in the Complaint and  
2 proximately contributed to the injuries and damages, if any there were, sustained by  
3 plaintiffs; that by reason of the premises said employers and their workers'  
4 compensation carrier are barred from recovery of any payments heretofore or hereafter  
5 made to plaintiffs pursuant to the workers' compensation laws of the State of California  
6 under doctrine of Witt v. Jackson, 57 Cal.2d 57.

7 AS AND FOR A ELEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
8 DEFENSE, this answering defendant alleges that plaintiffs' Complaint herein is barred  
9 by Labor Code §3600, et seq.

10 AS AND FOR A TWELFTH, SEPARATE AND DISTINCT AFFIRMATIVE  
11 DEFENSE, this answering defendant alleges that plaintiffs' Complaint herein is barred  
12 by the Doctrine of Laches.

13 AS AND FOR A THIRTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
14 DEFENSE, this answering defendant alleges that the asbestos-containing products of  
15 defendant which are alleged to have caused injury to plaintiffs were manufactured in  
16 compliance with and supplied pursuant to mandatory government specifications which  
17 required the use of asbestos. Accordingly, defendant is immune from liability or any  
18 damages suffered by plaintiffs as a consequence of exposure to asbestos contained in  
19 such products.

20 AS AND FOR A FOURTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
21 DEFENSE, this answering defendant alleges that its compliance with all governmental  
22 standards is a complete defense to plaintiffs' action.

23 AS AND FOR A FIFTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
24 DEFENSE, this answering defendant alleges that plaintiffs failed and neglected to use  
25 reasonable care to protect themselves and to minimize the losses and damages  
26 complained of, if any there were.

27 AS AND FOR A SIXTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
28 DEFENSE, this answering defendant alleges that plaintiffs are barred from asserting

1 any claim based on breach of warranty by reason of their failure to fulfill the conditions  
2 of warranties alleged in the Complaint in the event such alleged warranties are proved  
3 at trial.

4 AS AND FOR A SEVENTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
5 DEFENSE, this answering defendant alleges that plaintiffs within a reasonable time  
6 failed to give notice to defendant of the claimed breach of warranty or defects alleged in  
7 the Complaint on file herein in the manner and form prescribed by law.

8 AS AND FOR AN EIGHTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
9 DEFENSE, this answering defendant alleges that there was no privity or other legal  
10 relationship between this answering defendant and plaintiffs herein sufficient to entitle  
11 the plaintiffs to any legal relief by said defendant.

12 AS AND FOR A NINETEENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
13 DEFENSE, this answering defendant alleges that plaintiffs claim for punitive damages  
14 is prohibited because it would deprive defendant of its property without due process of  
15 law under the 14<sup>th</sup> Amendment of the United States Constitution and under the  
16 California Constitution. See U.S. Constitution, Amendment XIV, §1; Cal. Constitution,  
17 Art I. §7(a).

18 AS AND FOR A TWENTIETH, SEPARATE AND DISTINCT AFFIRMATIVE  
19 DEFENSE, this answering defendant alleges that plaintiffs' claim for punitive damages  
20 is barred by the Constitutional Prohibition against excessive fines. (See U.S.  
21 Constitution, Amendment VII; California Constitution, Art 1. §17.)

22 AS AND FOR A TWENTY-FIRST, SEPARATE AND DISTINCT AFFIRMATIVE  
23 DEFENSE, this answering defendant alleges that plaintiffs' claim for punitive damages  
24 is barred by the Constitutional Prohibition against impairing the obligation of contracts.  
25 See U.S. Constitution, Art I, §X, C1. See California Constitution, Art. I§9.

26 AS AND FOR A TWENTY-SECOND, SEPARATE AND DISTINCT  
27 AFFIRMATIVE DEFENSE, this answering defendant alleges that any claim for punitive  
28 or exemplary damages pursuant to California law herein constitutes a violation of equal

1 protection prohibited by the United States Constitution and the Constitution of the State  
2 of California and therefore fails to make a claim upon which relief can be granted.

3 AS AND FOR A TWENTY-THIRD, SEPARATE AND DISTINCT AFFIRMATIVE  
4 DEFENSE, this answering defendant alleges that the Complaint on file herein as to  
5 state facts sufficient to constitute a cause of action for punitive damages.

6 AS AND FOR A TWENTY-FOURTH, SEPARATE AND DISTINCT  
7 AFFIRMATIVE DEFENSE, this answering defendant alleges that plaintiffs' claim for  
8 punitive damages must consider the degree of reprehensibility of defendant's conduct,  
9 the disparity between the compensatory damages and punitive damages and the  
10 difference between punitive damages and the civil sanctions that could or would be  
11 imposed for comparable conduct. These considerations were outlined by the U.S.  
12 Supreme Court in BMW of North America v. Gore (1996) 517 U.S. 559, and Cooper  
13 Industries v. Leatherman Tool Group, Inc. (2001) 532 U.S. 524.

14 AS AND FOR A TWENTY-FIFTH, SEPARATE AND DISTINCT AFFIRMATIVE  
15 DEFENSE, this answering defendant alleges that, to the extent plaintiffs may be able to  
16 prove their allegations concerning liability, injuries and damages, which are specifically  
17 denied, they were the result of intervening acts of superseding negligence on the part of  
18 a person or persons over whom this defendant had neither control nor the right of  
19 control.

20 AS AND FOR A TWENTY-SIXTH, SEPARATE AND DISTINCT AFFIRMATIVE  
21 DEFENSE, this answering defendant alleges that plaintiffs are barred from asserting  
22 any causes of action by the Doctrine of Waiver.

23 AS AND FOR A TWENTY-SEVENTH, SEPARATE AND DISTINCT  
24 AFFIRMATIVE DEFENSE, this answering defendant alleges that plaintiffs are estopped  
25 from asserting any causes of action by their conduct.

26 AS AND FOR A TWENTY-EIGHTH, SEPARATE AND DISTINCT AFFIRMATIVE  
27 DEFENSE, this answering defendant alleges that plaintiffs have failed to join necessary  
28 and indispensable parties.



1 AS AND FOR A TWENTY-NINTH, SEPARATE AND DISTINCT AFFIRMATIVE  
2 DEFENSE, this answering defendant alleges that plaintiffs have improperly joined or  
3 misjoined it and other parties to this action.

4 AS AND FOR A THIRTIETH, SEPARATE AND DISTINCT AFFIRMATIVE  
5 DEFENSE, this answering defendant alleges that any claims that the alleged products  
6 are unsafe or defective in any manner are preempted by federal law.

7 AS AND FOR A THIRTY-FIRST, SEPARATE AND DISTINCT AFFIRMATIVE  
8 DEFENSE, this answering defendant alleges that any injuries and damages, if any  
9 there be, alleged by plaintiffs in the Complaint, were proximately caused by an  
10 unforeseeable reaction to the product or products and/or one or more of its, of their,  
11 components.

12 AS AND FOR A THIRTY-SECOND, SEPARATE AND DISTINCT AFFIRMATIVE  
13 DEFENSE, this answering defendant alleges that if plaintiffs' claims were already  
14 litigated and resolved in any prior action, plaintiffs' claims herein are barred based on  
15 the primary right and res judicata doctrines which prohibit splitting a single cause of  
16 action into successive suits, and seeking new recovery for injuries for which the  
17 plaintiffs were previously compensated by alleged joint tortfeasors.

18 AS AND FOR A THIRTY-THIRD, SEPARATE AND DISTINCT AFFIRMATIVE  
19 DEFENSE, this answering defendant alleges that plaintiffs' claims are barred by the  
20 principles of res judicata.

21 AS AND FOR A THIRTY-FOURTH, SEPARATE AND DISTINCT AFFIRMATIVE  
22 DEFENSE, plaintiffs' action, and each alleged cause of action, is barred by the terms  
23 and provisions of California Code of Civil Procedure Section 361.

24 WHEREFORE, Defendant, A.W. CHESTERTON COMPANY prays for judgment  
25 as follows:

26 1. That plaintiffs take nothing by way of their Complaint or any cause of action  
27 thereof against this answering defendant;

28 2. That the Court award judgement in favor of this answering defendant;

- 1 3. For reasonable attorney fees;
- 2 4. For costs of suit and disbursements; and
- 3 5. For such other and further relief as the Court may deem proper.

4 DATED: January 30, 2008

PRINDLE, DECKER & AMARO LLP

5  
6   
7 WILLIAM M. HAKE, ESQ.  
8 Attorneys for Defendant,  
9 A.W. CHESTERTON COMPANY  
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**PROOF OF SERVICE BY ELECTRONIC TRANSMISSION**

I, Sunshine D. Robles, declare as follows:

That I am, and was as the time of service of the documents herein referred to, over the age of 18 years, and not a party to the action; and I am employed in the County of San Francisco, California. My business address is 369 Pine Street, Suite 800, San Francisco, California 94104. On January 30, 2008, I electronically served the document(s) via Lexis Nexis File & Serve described as:

**DEFENDANT A.W. CHESTERTON COMPANY'S ANSWER TO COMPLAINT FOR DAMAGES, NEGLIGENCE, STRICT LIABILITY, PUNITIVE DAMAGES, LOSS OF CONSORTIUM, (ASBESTOS)**

On the recipients designated on the Transaction Receipt located on the Lexis Nexis File & Serve website. I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct and was executed on January 30, 2008 at San Francisco, California.

  
Sunshine D. Robles

# **EXHIBIT 37**

1 DAVID M. GLASPY, Esq. (SBN 95332)  
2 BRIAN S. O'MALLEY, Esq. (SBN 111921)  
3 JAMES O. HARTMAN Esq., (SBN 61438)  
4 LAW OFFICES OF GLASPY & GLASPY, INC.  
5 One Walnut Creek Center  
100 Pringle Avenue, Suite 750  
Walnut Creek, CA 94596  
Telephone: (925) 947-1300  
Facsimile: (925) 947-1594

6 Attorneys for Defendant  
7 Garlock Sealing Technologies, LLC

8  
9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 IN AND FOR THE COUNTY OF SAN FRANCISCO

11 THOMAS JORGENSEN and PATRICIA  
12 JORGENSEN

13 Plaintiffs,

14 v.

15 A.W. CHESTERTON COMPANY, et al.,

16 Defendants.

Case No.: 274494

ANSWER TO COMPLAINT FOR  
DAMAGES

17  
18 Defendants, GARLOCK SEALING TECHNOLOGIES, LLC, (hereinafter  
19 "GARLOCK") responds to plaintiffs (s') Unverified Complaint as follows:

20 Answering the allegations of plaintiff's(s') Complaint on file herein, this answering  
21 defendant denies each and every, all and singular, generally and specifically, the allegations  
22 contained in said complaint, and each and every part thereof, and in this connection denies  
23 that plaintiff(s) has/have been injured or damaged in any sum or sums, or at all, by reason of  
24 any carelessness, negligence, act or omissions of this defendant.  
25

26 ///

27 ///

**DEFENDANT HEREBY ASSERTS THE FOLLOWING SEPARATE AND  
DISTINCT, AFFIRMATIVE DEFENSES:**

1. That the plaintiff's claim is barred because it was not presented within the time prescribed by law for the commencement of an action upon the claim asserted, pursuant to the appropriate statutes of limitation, including, but not limited to the following separate and distinct sections of the California Code of Civil Procedure, contained in Part II, Title II, Chapter 3, beginning with Section 335 and continuing through Section 349 ¾. This action was not commenced within one year from the time of injury to plaintiff.

2. That the complaint, and all causes of action contained therein, have failed to set forth facts and allegations sufficient to constitute a cause of action against this answering defendant in that the complaint fails to state with particularity the circumstances constituting the alleged fraudulent concealment of the alleged wrongs.

The defendant has never engaged in any deception or fraud. The claims asserted in the complaint, therefore, are barred by the relevant statutes of limitation.

3. That plaintiff unreasonably delayed in bringing this action, without good cause therefore, and thereby has prejudiced the rights of the answering defendant, and as a direct and proximate result thereof, this action is barred by laches.

4. That plaintiff had not been injured by any product manufactured by Garlock.

That at all relevant times, all Garlock products were in conformity with the state of the art in the industry and with Federal Standards. The products made by Garlock are not inherently dangerous to human safety. Any asbestos in any Garlock product is locked in, incapsulated, and firmly bound or otherwise contained. Garlock products do not release dangerous amounts of asbestos dust or fibers into the air.

1           5.       That Garlock has had no notice or reason to believe that any of its products  
2 might be potentially hazardous, since, inter alia, any asbestos fibers contained in its products  
3 are locked in, encapsulated, and firmly bound, or otherwise contained. Garlock could not  
4 have reasonably foreseen any danger associated with the use of any of its products and may  
5 not be charged with the notice that any of its products posed hazard.  
6

7           Garlock has never been and is not now a part of the "asbestos and insulation  
8 products" industry to which plaintiff refers. Any alleged knowledge possessed by members  
9 of said industry was not shared by and may not be imputed to Garlock because Garlock has  
10 not manufactured asbestos-containing insulation products.  
11

12          6.       That Garlock did not know or believe and had no reason to know or believe at  
13 the time the plaintiff was allegedly exposed to its asbestos-containing products, or at any  
14 time, that they posed a risk sufficient to give rise to a duty to warn.  
15

16          That at all times since the enactment of the Occupation Safety and Health Act  
17 (OSHA), Garlock has fully complied with the requirements of OSHA and rules and  
18 regulations thereunder.  
19

20          7.       That any warranties deemed to have been made by Garlock were either fulfilled,  
21 terminated or disclaimed.  
22

23          8.       That insofar as the complaint is based on an allegation of misrepresentation and  
24 fraud by Garlock, the complaint fails to state with particularity the circumstances constituting  
25 the alleged fraud. The complaint, therefore, fails to state a claim against Garlock upon which  
26 relief may be granted. Garlock has never engaged in any concealment, misrepresentation or  
27 fraud.  
28

1           9.     That the alleged injuries of plaintiff were caused, in whole or in part, by his  
2 own acts or omissions in that, among other things:

3           a.     Plaintiff failed to exercise ordinary care for his own safety when he knew or  
4 should have known of the hazards incident to his work;

5           b.     Plaintiff failed to utilize protective clothing and safety equipment when he  
6 knew or should have known that the materials with which he was working might be  
7 harmful;

8           c.     Plaintiff failed to use properly Garlock products and subjected them to use  
9 that was abnormal, inappropriate, improper and not reasonably foreseeable by  
10 Garlock;

11           d.     Plaintiff failed to advise, request or demand that his employer provide proper  
12 safety equipment, clothing and protective devices for his use as an employee;

13           e.     Plaintiff failed to heed advice and warnings given about proper and safe  
14 working conditions and use of the products with which he was working and failed to  
15 use equipment provided to him by his employer and others.

16           10.    That plaintiff assumed any risks incident to his employment, including  
17 exposure to asbestos. Plaintiff, at all times mentioned in the complaint, was aware of all  
18 conditions of his employment, and fully appreciated all the risks, is any, that were involved,  
19 including exposure to asbestos. Notwithstanding such knowledge on the part of the plaintiff,  
20 plaintiff continued in his employment and voluntarily assumed the risk of the very injuries, if  
21 any, of which the plaintiff complains. Such an assumption of the risks is a bar to any  
22 recovery against Garlock.  
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1           11. That the injuries and damages alleged in said complaint, and each and every  
2 cause of action thereof, if any there were, were the direct and proximate result of the misuse,  
3 abuse or alteration of said products after they left the custody and the control of Garlock by  
4 plaintiff and his employer.  
5

6           12. That the culpable conduct of the plaintiff, including his own negligence and  
7 assumption of the risk, caused, in whole or in part, the damages alleged in the complaint,  
8 and, therefore, the alleged damages should be diminished in the proportion which the  
9 culpable conduct attributable to the plaintiff bears to any culpable conduct by Garlock that  
10 allegedly caused damage to the plaintiff.  
11

12           13. That any finding of negligence against this answering defendant should be  
13 compared to the negligence of all other parties to this action, including the plaintiff and all  
14 other defendants.  
15

16           14. That any alleged injuries to the plaintiff were due to and solely caused by the  
17 negligence of his employers, their agents and employees, in failing to provide safe and  
18 suitable working conditions; in failing to train properly and supervise the plaintiff; in failing  
19 to warn the plaintiff of any dangerous condition that such employer, their agents and  
20 employees knew or should have known were incident to the work being performed by the  
21 plaintiff; and in failing to provide safety equipment to the plaintiff. The negligence of said  
22 employer, their agents and employees, is an intervening and superseding cause of the alleged  
23 injuries to the plaintiff and a bar to any recovery by the plaintiff against Garlock.  
24

25           15. That the employer of plaintiff was aware of the possible risks, if any, involved  
26 in the utilization of materials containing asbestos, and fully appreciated all of the risks, if  
27 any, and further voluntarily assumed the risks of injuries, loss and damages, if any, as set  
28

1 forth in the complaint. The assumption of this risk proximately contributed to and caused the  
2 damages, if any, described in the complaint.

3       16. That the worker's compensation carriers for said employers have made and  
4 will in the future make certain payments to the plaintiff herein by reason of the injuries  
5 plaintiff allegedly received while in the course and scope of his employment for said  
6 employers. That the aforesaid carelessness and negligence of plaintiff's employers bar  
7 recovery against this answering defendant of all sums paid or to be paid to or on behalf of  
8 plaintiff by way of worker's compensation benefits as aforesaid. That the carelessness and  
9 negligence of said employers is by law imputed to said insurance carriers.  
10

11  
12       17. That the complaint herein, and each cause of action thereof, is barred as  
13 against this defendant by the provisions of the California Labor Code, Section 3601, et seq.

14  
15       18. That insofar as the complaint purports to assert a claim for punitive damages,  
16 it is premised on an alleged course of conduct vis a vis, the general public, and the plaintiff is  
17 this action, is therefore, not the real party in interest as to said purported punitive damage  
18 claim, and is barred and foreclosed from asserting such claim.

19       19. Garlock did not participate in any of the activities for which plaintiff asserts  
20 that punitive damages may be assessed.

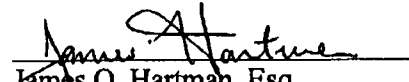
21  
22       20. Any asbestos-containing products manufactured and sold by this defendant  
23 which give rise to plaintiff's claims herein were designed and manufactured pursuant to and  
24 in accordance with specifications mandated by the United States Government or its agencies.  
25 The knowledge of the United States Government and its agencies of any possible health  
26 hazards from use of such products was equal or superior to that of this defendant, and by  
27  
28

1 reason thereof this defendant is entitled to such immunity from liability as exists in favor of  
2 the United States Government or its agencies.

3 WHEREFORE, Defendant prays judgment that plaintiff take nothing by reason of the  
4 complaint on file herein; that defendant have and recover their costs of suit herein incurred;  
5 and for such other and further relief as the court may deem just and proper under the  
6 circumstances.  
7

8 Dated: January 24, 2008

GLASPY & GLASPY

9   
10 James O. Hartman, Esq.  
11 Attorney For Defendants  
12 Garlock Sealing Technologies, Inc.,  
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PROOF OF SERVICE

I declare that:

I am employed in the County of Contra Costa, State of California. I am over the age of 18 years and not a party to the within action. My business address is One Walnut Creek Center, 100 Pringle Avenue, Suite 750, Walnut Creek, California 94596.

On the date listed below, I served the following document(s):

**ANSWER TO PLAINTIFFS' COMPLAINT**

By transmitting a true copy to:

**SEE ATTACHED LIST**

Via the following method:

  X  

(By LexisNexis File & Serve): By personally transmitting a true copy thereof via electronic mail to LexisNexis for e-mailing to all parties in this action.

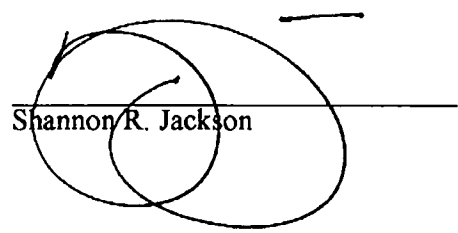
           (By Mail): This document, which is in an envelope addressed as stated above, sealed with postage thereon fully prepaid and will be deposited with the United States Postal Service this date in the ordinary course of business.

           (By Fed-Ex): This document, which is in an envelope addressed as stated above, sealed and all fees prepaid and deposited in the Federal Express located on the first floor at 100 Pringle Avenue, Walnut Creek, California on this date in the ordinary course of business.

           (By Personal Service): By personally delivering a true copy thereof to the office of the addresses attached by courier service.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this January <sup>30</sup>~~28~~, 2008 at Walnut Creek, California.

  
Shannon R. Jackson

**SERVICE LIST**

Attorney for Plaintiff

William Levin, Esq.  
Jeffrey Kaiser, Esq.  
Michael Mandelbrot, Esq.  
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(415) 646-7160/(415) 981-1270

Coordinating Defense Counsel

Berry & Berry  
P.O. Box 16070  
Oakland, CA 94610

# **EXHIBIT 38**

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 MICHAEL J. ESTRADA (SBN 121439)  
 LLOYD D. COWELL (SBN 214382)  
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 San Rafael, CA 94901  
 Telephone: (415) 453-0555  
 Facsimile: (415) 453-0549

Attorneys for Defendant  
 HILL BROTHERS CHEMICAL COMPANY

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 CITY AND COUNTY OF SAN FRANCISCO – UNLIMITED JURISDICTION

THOMAS JORGENSEN and PATRICIA  
 JORGENSEN  
 Plaintiffs,  
 vs.  
 A.W. CHESTERTON COMPANY, et al.,  
 Defendants.

) Case No. CGC-08-274494  
 )  
 ) DEFENDANT HILL BROTHERS CHEMICAL  
 ) COMPANY'S ANSWER TO PLAINTIFFS'  
 ) UNVERIFIED COMPLAINT FOR  
 ) NEGLIGENCE, STRICT LIABILITY,  
 ) PUNITIVE DAMAGES, LOSS OF  
 ) CONSORTIUM – ASBESTOS  
 )  
 ) Action Filed: January 3, 2008  
 )

Pursuant to Code of Civil Procedure Section 431.30, Subdivision (d), defendant HILL BROTHERS CHEMICAL COMPANY (hereinafter referred to as "HILL BROTHERS") answers the unverified complaint of plaintiffs THOMAS JORGENSEN and PATRICIA JORGENSEN, (hereinafter collectively referred to as "plaintiffs"), as follows:

1. The answering defendant denies generally and specifically, all and singular, each and every allegation contained in the complaint and denies that plaintiffs have been damaged in any sum, manner or at all.
2. Defendant further denies that the injuries or damages complained of, if any, were due or caused by any carelessness or negligence or any act or omission on the part of said answering defendant.

FIRST AFFIRMATIVE DEFENSE

The complaint and the separate causes of action therein fail to state facts sufficient to

1 constitute a cause of action against said answering defendant.

2 SECOND AFFIRMATIVE DEFENSE

3 The complaint and the separate causes of action therein are barred by the provisions of §§ 335.1,  
4 338.1, 339, 340.2, 340.8, 343, 583.210, 583.310 and 583.410 of the California Code of Civil Procedure.

5 THIRD AFFIRMATIVE DEFENSE

6 Plaintiffs have unreasonably delayed in the commencement of this action to the prejudice of HILL  
7 BROTHERS whereby the complaint and each cause of action therein are barred by the doctrine of laches.

8 FOURTH AFFIRMATIVE DEFENSE

9 Defendant alleges that the complaint and the separate causes of action are barred under the  
10 doctrines of collateral estoppel or res judicata, or both.

11 FIFTH AFFIRMATIVE DEFENSE

12 Defendant alleges that the plaintiffs were contributorily negligent; that such contributory  
13 negligence was a proximate cause of plaintiffs' alleged damages, if any, which are therefore diminished in  
14 direct proportion to the fault attributable to plaintiffs as compared with that of said answering defendant.

15 SIXTH AFFIRMATIVE DEFENSE

16 Defendant alleges that the complaint and the separate causes of action are barred on the grounds  
17 that plaintiffs knew, or in the exercise of ordinary care, should have known, of the risk of the injuries or  
18 damages alleged in the complaint, if any, and nevertheless did freely and voluntarily assume said risk and  
19 this undertaking proximately caused and contributed to the loss, injuries or damages, if any, alleged by  
20 plaintiffs.

21 SEVENTH AFFIRMATIVE DEFENSE

22 Defendant alleges that the negligence of this answering defendant, if in fact this answering  
23 defendant was negligent and the liability, if any, of said answering defendant should be diminished  
24 in direct proportion to the fault, if any, attributable to others as compared with that of said answering  
25 defendant.

26 EIGHTH AFFIRMATIVE DEFENSE



1 Defendant alleges that if plaintiffs have suffered any damages, which HILL BROTHERS  
2 expressly denies, HILL BROTHERS alleges that plaintiffs' recovery for those damages is barred by  
3 plaintiffs' failure to mitigate those damages.

4 NINTH AFFIRMATIVE DEFENSE

5 Defendant alleges that plaintiffs named HILL BROTHERS in this litigation without a reasonable  
6 investigation. Accordingly, HILL BROTHERS pursuant to California Code of Civil Procedure, § 128.5,  
7 requests reasonable expenses, including attorneys' fees incurred by this defendant as a result of the  
8 maintenance by plaintiffs of this bad faith action.

9 TENTH AFFIRMATIVE DEFENSE

10 Defendant alleges that plaintiffs' damages, if any, were proximately caused by an unforeseeable,  
11 independent, intervening and/or superseding event beyond the control and unrelated to any conduct of  
12 HILL BROTHERS. HILL BROTHERS' actions, if any, were superseded by the negligence and wrongful  
13 conduct of others.

14 ELEVENTH AFFIRMATIVE DEFENSE

15 Defendant alleges that the court lacks subject matter jurisdiction over the matters alleged in the  
16 complaint because the complaint and each alleged cause of action against defendant are barred by the  
17 provisions of California Labor Code, § 3601, et seq.

18 TWELFTH AFFIRMATIVE DEFENSE

19 Defendant alleges that at the times of the damages alleged in plaintiffs' complaint, plaintiff  
20 THOMAS JORGENSEN's employers were negligent and that such negligence on the part of said  
21 employers proximately caused the injuries, loss and damages, including non-economic damages,  
22 complained of by plaintiffs, if any there were; and that defendant is not liable for said employers'  
23 proportionate share of non-economic damages.

24 THIRTEENTH AFFIRMATIVE DEFENSE

25 Defendant alleges that at the time of the injuries alleged in the complaint, all of plaintiff  
26 THOMAS JORGENSEN's employers were sophisticated users of asbestos containing products and said  
27 employers' negligence in providing the product to its employees in a negligent, careless and reckless  
28 manner was a superseding, intervening cause of plaintiffs' damages, if any there were.

1 FOURTEENTH AFFIRMATIVE DEFENSE

2 Defendant alleges it had no knowledge, either actual or constructive, and by the application of  
3 reasonable, developed human skill and foresight had no reason to know of the propensities, if any, of  
4 asbestos, asbestos fibers or other products containing asbestos to cause or contribute to the creation of  
5 medical conditions or circumstances involving alleged injuries to the lungs, respiratory and cardiovascular  
6 systems or any other illnesses of any type whatsoever.

7 FIFTEENTH AFFIRMATIVE DEFENSE

8 Defendant alleges that the complaint and the separate causes of action are barred on the grounds  
9 that the conduct of HILL BROTHERS referred to in the complaint and the separate causes of action, if  
10 any, was not a substantial factor in bringing about the injuries and damages complained of by the  
11 plaintiffs.

12 SIXTEENTH AFFIRMATIVE DEFENSE

13 Defendant alleges that the liability for plaintiffs' damages, if any, rest solely with the strict product  
14 liability of others.

15 WHEREFORE, HILL BROTHERS CHEMICAL COMPANY prays for judgment as follows:

- 16 1. That plaintiffs take nothing by way of their complaint;  
17 2. That this action against said answering defendant be dismissed;  
18 3. For attorneys' fees and the cost of suit incurred herein;  
19 4. For such other relief as the court may deem proper.

20 Dated: January 28, 2008

VASQUEZ & ESTRADA

21  
22 By 

MICHAEL A. VASQUEZ

Attorneys for Defendant

HILL BROTHERS CHEMICAL COMPANY  
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PROOF OF SERVICE

Thomas Jorgensen and Patricia Jorgensen v. A.W. Chesterton Company, et al.  
San Francisco Superior Court No. CGC 08-274494

I, the undersigned, declare: that I am, and was at the time of service of the documents herein referred to, over the age of 18 years, and not a party to the action; and I am employed in the County of Marin, California. My business address is Courthouse Square, 1000 Fourth Street, Suite 700, San Rafael, California, 94901.

On the date executed below, I electronically served the document(s) via LexisNexis File & Serve described as:

**DEFENDANT HILL BROTHERS CHEMICAL COMPANY'S ANSWER TO  
PLAINTIFFS' UNVERIFIED COMPLAINT FOR NEGLIGENCE, STRICT LIABILITY,  
PUNITIVE DAMAGES, LOSS OF CONSORTIUM-ASBESTOS**

on the recipients designated on the Transaction Receipt located on the LexisNexis File & Serve website. I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct and was executed on January 29, 2008, at San Rafael, California.

/s/ Karina Y. Hernandez

Karina Y. Hernandez

# **EXHIBIT 39**

1 ARMSTRONG & ASSOCIATES, LLP  
2 William H. Armstrong, SBN 40650  
3 Lisa A. Sapcoe, SBN 224799  
4 Mahsa M. Kashani, SBN 242685  
5 One Kaiser Plaza, Suite 625  
6 Oakland, California 94612  
7 Telephone: (510) 433-1830  
8 Facsimile: (510) 433-1836

9 Attorneys for Defendant  
10 Elementis Chemicals Inc.,  
11 f/k/a Harcros Chemicals Inc.,  
12 a Delaware corporation, as successor-in-interest to  
13 Harrisons & Crosfield (Pacific) Inc.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **COUNTY OF SAN FRANCISCO – UNLIMITED JURISDICTION**

13 THOMAS JORGENSEN AND  
14 PATRICIA JORGENSEN,

15 Plaintiffs,

16 vs.

17 A.W. CHESTERTON COMPANY, et al.,

18 Defendants.

No. CGC-08-274494

**ELEMENTIS CHEMICALS INC.'S  
ANSWER TO PLAINTIFFS'  
COMPLAINT FOR DAMAGES  
(ASBESTOS)**

**NEGLIGENCE, STRICT LIABILITY,  
PUNITIVE DAMAGES, LOSS OF  
CONSORTIUM**

Action Filed: January 3, 2008

**THIS CASE IS SUBJECT TO  
MANDATORY ELECTRONIC FILING  
PURSUANT TO AMENDED G.O. 158**

1           Answering the unverified Complaint for Damages (Asbestos) (Negligence, Strict  
2   Liability, Punitive Damages, Loss of Consortium) filed by Plaintiffs Thomas Jorgensen and  
3   Patricia Jorgensen ("Plaintiffs"), Defendant Elementis Chemicals Inc. ("Elementis"), formerly  
4   known as Harcros Chemicals Inc., a Delaware corporation, as successor-in-interest to Harrisons  
5   & Crosfield (Pacific) Inc., generally denies the allegations of each and every cause of action to  
6   the extent such allegations relate to it, its predecessors or successors, and further denies that  
7   Plaintiffs have been damaged in the sums alleged, or in any other sum, or at all. To the extent  
8   such allegations relate to others, Elementis admits such allegations, except as to Crown Cork &  
9   Seal, individually and as successor-in-interest to Mundet Cork. Any other affirmative defenses  
10   pled by other defendants and not pled by Elementis are hereby incorporated herein to the extent  
11   they do not conflict with Elementis' affirmative defenses. Elementis hereby gives notice that it  
12   intends to rely upon any other defense that may become available or appear during the discovery  
13   proceedings in this case, and hereby reserves the right to amend its answer to assert any such  
14   defenses.

15                           **FIRST AFFIRMATIVE DEFENSE**

16           The Complaint, and each of its causes of action, fails to state facts sufficient to  
17   constitute a cause of action against Elementis.

18                           **SECOND AFFIRMATIVE DEFENSE**

19           Plaintiffs' alleged injuries, losses, or damages, if and to the extent they occurred,  
20   were aggravated by their failure to use reasonable diligence to mitigate them.

21                           **THIRD AFFIRMATIVE DEFENSE**

22           Plaintiffs' alleged injuries, losses or damages, if and to the extent they occurred,  
23   which occurrence is expressly denied, were caused solely or contributed to by Plaintiff  
24   Thomas Jorgensen's own recklessness, carelessness, and/or negligence. Plaintiffs' respective  
25   recoveries from Elementis, if any, must be reduced by Plaintiff Thomas Jorgensen's respective  
26   comparative fault.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the applicable statutes of limitations, including California *Code of Civil Procedure* section 340.2, or by the doctrine of laches, or both.

**FIFTH AFFIRMATIVE DEFENSE**

The injuries and damages alleged in the Complaint, if any, were the direct and proximate result of the unforeseeable misuse and/or modification of products by Plaintiff Thomas Jorgensen and/or his employer(s).

**SIXTH AFFIRMATIVE DEFENSE**

To the extent that Plaintiffs' alleged injuries, losses, or damages are asserted to result from an alleged employment relationship with Elementis, Plaintiffs' claims are barred by the exclusivity provisions of the California *Labor Code*.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs' alleged injuries, losses or damages, if and to the extent they occurred, which occurrence is expressly denied, were caused solely or contributed to by the faults of third parties for which Elementis is not responsible.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the applicable principles of waiver and estoppel.

**NINTH AFFIRMATIVE DEFENSE**

Elementis alleges that the risk of exposure to asbestos-containing products was inherent in Plaintiff Thomas Jorgensen's trade and work, and under the doctrine of primary assumption of risk, Plaintiff Thomas Jorgensen may not recover for harm caused by such inherent risk.

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1                                    **TENTH AFFIRMATIVE DEFENSE**

2                    Plaintiff Thomas Jorgensen's alleged illnesses and injuries, if and to the extent  
3 they occurred, which occurrence is expressly denied, were caused solely or contributed to by the  
4 negligence of Plaintiff Thomas Jorgensen and/or his employer(s); and to the extent that Plaintiffs  
5 have received or in the future heirs will receive, worker's compensation benefits for such  
6 illnesses and/or injuries, Elementis is entitled to a comparative reduction in any economic  
7 damages sought by Plaintiffs or recovered by them in this action.

8                                    **ELEVENTH AFFIRMATIVE DEFENSE**

9                    Plaintiffs' claims are barred by the provisions of California *Code of Civil*  
10 *Procedure* section 430.10 and/or the primary right doctrine, to the extent there is or was another  
11 action pending between the same parties on the same cause of action.

12                                   **TWELFTH AFFIRMATIVE DEFENSE**

13                   The Complaint fails to state facts sufficient to base any claim for non-economic  
14 damages because it fails to allege the portion of such damages, if any, that Plaintiffs attribute to  
15 Elementis as required by California *Civil Code* section 1431.2.

16                                   **THIRTEENTH AFFIRMATIVE DEFENSE**

17                   Elementis alleges that at all times relative to matters alleged in Plaintiffs'  
18 Complaint, all of Plaintiff Thomas Jorgensen's employers were sophisticated users of asbestos  
19 and asbestos-containing products and said employers' negligence in exposing its employees to  
20 asbestos and asbestos-containing products in a careless, negligent, and reckless manner was a  
21 superseding intervening cause of Plaintiff Thomas Jorgensen's alleged injuries.

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1                                   **FOURTEENTH AFFIRMATIVE DEFENSE**

2           Elementis is informed and believes, and thereon alleges, the Plaintiffs have  
3 released, settled, entered into an accord and satisfaction or otherwise compromised their claims  
4 herein, and accordingly, said claims are barred by operation of law. Alternatively, Plaintiffs  
5 have accepted compensation as partial settlement of those claims for which Elementis is entitled  
6 to a set-off.

7                                   **FIFTEENTH AFFIRMATIVE DEFENSE**

8           Any products allegedly supplied by Elementis were provided in bags; therefore,  
9 any failure to provide adequate warnings by the actual purchasers or users was an intervening,  
10 superseding proximate cause of Plaintiffs' alleged injuries, losses and damages, if any.

11                                  **SIXTEENTH AFFIRMATIVE DEFENSE**

12           Elementis' products at issue, if any, were distributed, manufactured, produced,  
13 sold, and supplied in conformity with and pursuant to government standards, industry standards  
14 and statutes based upon the state of knowledge existing at the time of the activities.

15                                  **SEVENTEENTH AFFIRMATIVE DEFENSE**

16           Plaintiffs' claim for punitive damages violates Elementis' right to due process and  
17 equal protection as guaranteed by the Fourteenth Amendment to the United States Constitution  
18 and article I, section 7, of the California Constitution in that: (1) neither California *Civil Code*  
19 section 3294 nor any other provision of California or federal law provides an adequate or  
20 meaningful standard for determining the nature of the conduct upon which an award of punitive  
21 damages may be based or for determining or reviewing the amount of a punitive damage award;  
22 and (2) neither California Civil Code section 3294, nor any other provision of California or  
23 federal law provides adequate procedural safeguards for the imposition of punitive damages,  
24 including, but not limited to:

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- 1 (a) imposing such damages only upon the presentation of evidence beyond a  
2 reasonable doubt;  
3 (b) protecting the defendant's privilege against self-incrimination; and  
4 (c) providing for a unanimous jury verdict as to the punitive damages portion  
5 of any adverse judgment.

6 **WHEREFORE**, Defendant Elementis prays judgment that Plaintiffs take nothing  
7 by reason of the Complaint, that Plaintiffs' Complaint be dismissed against Elementis with  
8 prejudice, that Elementis recovers its costs of suit, and for such other relief as the Court deems  
9 proper.

10  
11 DATED: January 24, 2008.

12 ARMSTRONG & ASSOCIATES, LLP

13  
14 By: /s/ Mahsa M. Kashani  
15 Mahsa M. Kashani, SBN 242685  
16 One Kaiser Plaza, Suite 625  
17 Oakland, California 94612  
18 Telephone: (510) 433-1830  
19 Facsimile: (510) 433-1836

20  
21 Attorneys for Defendant  
22 Elementis Chemicals Inc.  
23  
24  
25  
26

**PROOF OF SERVICE BY ELECTRONIC TRANSMISSION**

*Thomas Jorgensen and Patricia Jorgensen v. A.W. Chesterton Company*  
San Francisco Superior Court, Civil Action Number CGC-08-2744944

I, Patricia R. Antolino, declare that I am, and was at the time of service of the document herein referred to, over 18 years of age, not a party to this action and a citizen of the United States. I am employed in the County of Oakland, California by Armstrong & Associates, LLP and my work email address is Patricia.Antolino@armstrongetal.com and my work mailing address is One Kaiser Plaza, Suite 625, Oakland, California 94612.

On January 24, 2008, I electronically served the following document by LexisNexis File & Serve:

**ELEMENTIS CHEMICALS INC.'S  
ANSWER TO PLAINTIFFS' COMPLAINT FOR DAMAGES (ASBESTOS)**

I served the recipients designated on the Transaction Receipt located on the LexisNexis File & Service website.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on January 24, 2008, at Oakland, California.

\_\_\_\_\_  
/s/ Patricia R. Antolino  
Patricia R. Antolino

# **EXHIBIT 40**



*Thomas Jorgensen, et al. v. Asbestos Defendants*  
San Francisco Superior Court No. CGC 08 274494

I, the undersigned, declare: that I am, and was at the time of service of the documents herein referred to, over the age of 18 years, and not a party to the action; and I am employed in the County of Marin, California. My business address is 1000 Fourth Street, Suite 700, San Rafael, California, 94901.

On the date executed below, I electronically served the document(s) via LexisNexis File & Serve described as:

**DEFENDANT LAMONS GASKET COMPANY'S ANSWER TO PLAINTIFF'S UNVERIFIED COMPLAINT FOR PERSONAL INJURY – ASBESTOS**

**DEFENDANT LAMONS GASKET COMPANY'S DEMAND FOR JURY TRIAL**

**DEFENDANT LAMONS GASKET COMPANY'S OBJECTION TO USE OF COMMISSIONER**

**PROOF OF SERVICE**

on the recipients designated on the Transaction Receipt located on the LexisNexis File & Serve website. I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct and was executed on January 23, 2008 at San Rafael, California.

/s/ Sophia Leshin

Sophia Leshin

# **EXHIBIT 41**





# **EXHIBIT 42**



EMARD DANOFF PORT TAMULSKI & PAETZOLD LLP  
Andrew I. Port (State Bar # 120977)  
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Attorneys for Defendant  
CROWLEY MARITIME CORPORATION

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

THOMAS JORGENSEN AND PATRICIA  
JORGENSEN

Plaintiffs,

vs.

A.W. CHESTERTON COMPANY, et al.

Defendants.

Case No.: CV 08 0903 EMC

**EXHIBIT A43 – A51 TO NOTICE OF  
REMOVAL OF ACTION UNDER 28  
U.S.C. §1442(a)(1)  
(FEDERAL OFFICER)**

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# **EXHIBIT 43**

RICHARD D. DUMONT, ESQ. (SBN 107967)  
 PAUL J. GAMBA, ESQ. (SBN 146097)  
 VASQUEZ & ESTRADA  
 1000 Fourth Street, Suite 700  
 San Rafael, CA 94901  
 Telephone: (415) 453-0555  
 Facsimile: (415) 453-0549

Attorneys for Defendant  
 LAMONS GASKET COMPANY,  
 Individually, As Successor-In-Interest and  
 Parent Alter Ego to Power Engineering &  
 Equipment Company, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO – UNLIMITED JURISDICTION

THOMAS JORGENSEN and PATRICIA  
 JORGENSEN,

Plaintiffs,

vs.

A.W. CHESTERTON COMPANY, et al.,

Defendants.

) Case No.: CGC-08-274494  
 )  
 )

) **DEFENDANT LAMONS GASKET**  
 ) **COMPANY'S ANSWER TO PLAINTIFF'S**  
 ) **UNVERIFIED COMPLAINT FOR**  
 ) **PERSONAL INJURY – ASBESTOS**  
 )  
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DEFENDANT LAMONS GASKET COMPANY, Individually, As Successor-In-Interest  
 and Parent Alter Ego to Power Engineering & Equipment Company, Inc. (hereinafter  
 “DEFENDANT”), answers the unverified Complaint herein on its own behalf and on behalf of no  
 other defendant or entity as follows:

Pursuant to California Code of Civil Procedure section 431.30(d), DEFENDANT denies  
 generally each and every allegation of the Complaint.

**FIRST AFFIRMATIVE DEFENSE**

Neither the Complaint nor any purported cause of action alleged by plaintiffs therein states  
 facts sufficient to constitute a cause of action against DEFENDANT.

**SECOND AFFIRMATIVE DEFENSE**

To the extent the Complaint asserts DEFENDANT's alleged “market share” liability, or  
 “enterprise liability,” the Complaint fails to state facts sufficient to constitute a cause of action  
 against DEFENDANT.

1 THIRD AFFIRMATIVE DEFENSE

2 Neither the Complaint nor any purported cause of action alleged therein states facts  
3 sufficient to entitle plaintiffs to an award of punitive damages against DEFENDANT.

4 FOURTH AFFIRMATIVE DEFENSE

5 The imposition of any punitive damages in this matter would deprive DEFENDANT of its  
6 property without due process of law under the California Constitution and United States  
7 Constitution.

8 FIFTH AFFIRMATIVE DEFENSE

9 The imposition of any punitive damages in this matter would violate the United States  
10 Constitution's prohibition against laws impairing the obligation of contracts.

11 SIXTH AFFIRMATIVE DEFENSE

12 The imposition of any punitive damages in this matter would constitute a criminal fine or  
13 penalty and should, therefore, be remitted on the ground that the award violates the United States  
14 Constitution.

15 SEVENTH AFFIRMATIVE DEFENSE

16 Plaintiffs' action, and each alleged cause of action, is barred by the applicable statute of  
17 limitations, including but not limited to California Code of Civil Procedure, sections 335.1, 338.1,  
18 339, 340.2, 340.8, 343, 583.310 and 583.410 and California Commercial Code, section 2725.

19 EIGHTH AFFIRMATIVE DEFENSE

20 Plaintiffs unreasonably delayed in bringing this action, without good cause therefore, and  
21 thereby have prejudiced DEFENDANT as a direct and proximate result of such delay; accordingly,  
22 this action is barred by laches and by section 583.101, et seq. of the Code of Civil Procedure.

23 NINTH AFFIRMATIVE DEFENSE

24 Plaintiffs were negligent in and about the matters alleged in the Complaint and in each  
25 alleged cause of action; this negligence proximately caused, in whole or in part, the damages  
26 alleged in the Complaint. In the event plaintiffs are entitled to any damages, the amount of these  
27 damages should be reduced by the comparative fault of plaintiffs and any person whose negligent  
28 acts or omissions are imputed to plaintiffs.

1 TENTH AFFIRMATIVE DEFENSE

2 Plaintiffs knowingly, voluntarily and unreasonably undertook to encounter each of the risks  
3 and hazards, if any, referred to in the Complaint and each alleged cause of action, and this  
4 undertaking proximately caused and contributed to any loss, injury or damages incurred by  
5 plaintiffs.

6 ELEVENTH AFFIRMATIVE DEFENSE

7 Any loss, injury or damage incurred by plaintiffs was proximately caused by the negligent  
8 or willful acts or omissions of parties whom DEFENDANT neither controlled nor had the right to  
9 control, and was not proximately caused by any acts, omissions or other conduct of  
10 DEFENDANT.

11 TWELFTH AFFIRMATIVE DEFENSE

12 The products referred to in the Complaint were misused, abused or altered by plaintiffs or  
13 by others; the misuse, abuse or alteration was not reasonably foreseeable to DEFENDANT, and  
14 proximately caused any loss, injury or damages incurred by plaintiffs.

15 THIRTEENTH AFFIRMATIVE DEFENSE

16 DEFENDANT alleges that its products, if any, were manufactured, produced, supplied,  
17 sold and/or distributed in mandatory conformity with specifications promulgated by the United  
18 States Government under its war powers, as set forth in the United States Constitution, and that  
19 any recovery by plaintiffs on the Complaint on file herein is barred in consequence of the exercise  
20 of those sovereign powers.

21 FOURTEENTH AFFIRMATIVE DEFENSE

22 Plaintiffs failed to exercise due diligence to mitigate his loss, injury or damages;  
23 accordingly, the amount of damages to which plaintiffs are entitled, if any, should be reduced by  
24 the amount of damages which would have otherwise been mitigated.

25 FIFTEENTH AFFIRMATIVE DEFENSE

26 The Court lacks subject matter jurisdiction over the matters alleged in the Complaint  
27 because the Complaint and each alleged cause of action against DEFENDANT are barred by the  
28 provisions of California Labor Code, section 3600, et seq.

1 SIXTEENTH AFFIRMATIVE DEFENSE

2 DEFENDANT alleges that at the time of the injuries alleged in the Complaint, plaintiffs  
3 were employed and were entitled to receive Workers' Compensation benefits from his/her  
4 employer's workers' compensation insurance carrier; that all of plaintiffs' employers, other than  
5 DEFENDANT, were negligent in and about the matters referred to in said Complaint, and that  
6 such negligence on the part of said employers proximately and concurrently contributed to the  
7 happening of the accident and to the loss or damage complained of by plaintiffs, if any there were;  
8 and that by reason thereof DEFENDANT is entitled to set off and/or reduce any such Workers'  
9 Compensation benefits received or to be received by plaintiffs against any judgment which may be  
10 rendered in favor of plaintiffs. (*Witt v. Jackson*, 57 Cal.2d 57, 366 P.2d 641)

11 SEVENTEENTH AFFIRMATIVE DEFENSE

12 DEFENDANT alleges that at the time of the injuries alleged in the Complaint, plaintiffs'  
13 employers, other than DEFENDANT, were negligent in and about the matters referred to in said  
14 Complaint, and that such negligence on the part of said employers proximately and concurrently  
15 contributed to any loss or damage, including non-economic damages, complained of by plaintiffs,  
16 if any there were; and that DEFENDANT is not liable for said employers' proportionate share of  
17 non-economic damages.

18 EIGHTEENTH AFFIRMATIVE DEFENSE

19 DEFENDANT alleges that at the time of the injuries alleged in the Complaint, parties other  
20 than this DEFENDANT were negligent in and about the matters referred to in said Complaint, and  
21 that such negligence on the part of said parties proximately and concurrently contributed to any  
22 loss or damage, including non-economic damages, complained of by plaintiffs, if any there were;  
23 and that DEFENDANT herein shall not be liable for said parties' proportionate share of non-  
24 economic damages.

25 NINETEENTH AFFIRMATIVE DEFENSE

26 DEFENDANT alleges that at all times relative to matters alleged in the Complaint, all of  
27 plaintiffs' employers, other than DEFENDANT, were sophisticated users of asbestos-containing  
28 products and said employers' negligence in providing the product to its employees in a negligent,



1 careless and reckless manner was a superseding cause of plaintiffs' injuries and damages, if any.

2 TWENTIETH AFFIRMATIVE DEFENSE

3 If plaintiffs have received, or in the future receive, Workers' Compensation benefits from  
4 DEFENDANT under the Labor Code of the State of California as a consequence of the alleged  
5 industrial injury referred to in the Complaint, and in the event plaintiffs are awarded damages  
6 against DEFENDANT, DEFENDANT claims a credit against this award to the extent that  
7 DEFENDANT is barred from enforcing his rights to reimbursement for Workers' Compensation  
8 benefits that plaintiffs have received or may in the future receive.

9 TWENTY-FIRST AFFIRMATIVE DEFENSE

10 If plaintiffs have received, or in the future receive Workers' Compensation benefits from  
11 DEFENDANT under the Labor Code of the State of California as a consequence of the alleged  
12 industrial injury referred to in the Complaint, DEFENDANT demands repayment of any such  
13 Workers' Compensation benefits in the event that plaintiffs recover tort damages as a result of the  
14 industrial injury allegedly involved here. Although DEFENDANT denies the validity of plaintiffs'  
15 claims, in the event those claims are held valid and not barred by the statute of limitations or  
16 otherwise, DEFENDANT asserts that cross-demands for money have existed between plaintiffs  
17 and DEFENDANT and the demands are compensated, so far as they equal each other, pursuant to  
18 California Code of Civil Procedure section 431.70.

19 TWENTY-SECOND AFFIRMATIVE DEFENSE

20 At all times and places in the Complaint, plaintiffs were not in privity of contract with  
21 DEFENDANT and said lack of privity bars plaintiffs' recovery herein upon any theory of  
22 warranty.

23 TWENTY-THIRD AFFIRMATIVE DEFENSE

24 Plaintiffs are barred from recovery in that all products produced by DEFENDANT, if any,  
25 were in conformity with the existing state-of-the-art, and as a result, these products were not  
26 defective in any manner.

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1 TWENTY-FOURTH AFFIRMATIVE DEFENSE

2 DEFENDANT did not and does not have a substantial percentage of the market for the  
3 asbestos-containing products which allegedly caused plaintiffs' injuries and damages. Therefore,  
4 DEFENDANT may not be held liable to plaintiffs based on this DEFENDANT's alleged  
5 percentage share of the applicable market.

6 TWENTY-FIFTH AFFIRMATIVE DEFENSE

7 DEFENDANT denies any and all liability to the extent that plaintiffs assert  
8 DEFENDANT's alleged liability as a successor, successor in business, successor in product line or  
9 a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a  
10 portion thereof, parent, alter-ego, subsidiary, wholly or partially owned by, or the whole or partial  
11 owner of or member in an entity researching, studying, manufacturing, fabricating, designing,  
12 labeling, assembling, distributing, leasing, buying, offering for sale, selling, inspecting, servicing,  
13 installing, contracting for installation, repairing, marketing, warranting, rebranding, manufacturing  
14 for others, packaging and advertising a certain substance, the generic name of which is asbestos.

15 TWENTY-SIXTH AFFIRMATIVE DEFENSE

16 DEFENDANT alleges that plaintiffs' claims are or may be barred in whole or in part by res  
17 judicata, collateral estoppel, issue preclusion and/or release.

18 TWENTY-SEVENTH AFFIRMATIVE DEFENSE

19 DEFENDANT alleges that it is immune from liability for any alleged failure to warn  
20 plaintiffs of material risks associated with DEFENDANT's products, if any, because such risks  
21 were or should have been obvious to a reasonably prudent product user in plaintiffs' position, or  
22 were otherwise a matter of common knowledge to persons in the same or similar position to  
23 plaintiffs.

24 TWENTY-EIGHTH AFFIRMATIVE DEFENSE

25 This court lacks subject matter jurisdiction over the causes of action alleged in the  
26 Complaint.

27 TWENTY-NINTH AFFIRMATIVE DEFENSE

28 As a result of plaintiffs' unreasonable delay in bringing this action, without good cause

1 therefore, in addition to his other unreasonable acts and omissions, plaintiffs have waived each or  
2 some of the claims stated or purportedly stated in the Complaint.

3 THIRTIETH AFFIRMATIVE DEFENSE

4 The activity alleged in the Complaint, to the extent that it was engaged in by  
5 DEFENDANT, if at all, was not ultrahazardous under California law.

6 THIRTY-FIRST AFFIRMATIVE DEFENSE

7 California Civil Code sections 1431.1 through 1431.5, known as the Fair Responsibility  
8 Act of 1986, is applicable at least in part to the present action and to certain claims therein, and  
9 based upon the principle of comparative fault, the liability, if any, of DEFENDANT, if liable at all,  
10 shall be several only and shall not be joint. DEFENDANT, if liable at all, shall be liable as to  
11 certain claims only for the amount of non-economic damages allocated to DEFENDANT in direct  
12 proportion to DEFENDANT's percentage of fault, if any, and a separate and several judgment  
13 shall be rendered against DEFENDANT for non-economic damages, if any.

14 THIRTY-SECOND AFFIRMATIVE DEFENSE

15 Plaintiffs cannot prove any facts showing that the conduct of DEFENDANT was the cause  
16 in fact of any alleged injuries or damages suffered by plaintiffs as alleged in the Complaint.

17 THIRTY-THIRD AFFIRMATIVE DEFENSE

18 Plaintiffs cannot prove any facts showing that the conduct of DEFENDANT was the  
19 proximate cause of any alleged injuries or damages suffered by plaintiffs as alleged in the  
20 Complaint.

21 THIRTY-FOURTH AFFIRMATIVE DEFENSE

22 If plaintiffs were injured as alleged in the Complaint, those injuries were proximately  
23 caused by allergies, sensitivities and idiosyncrasies particular to plaintiffs, not found in the general  
24 public and unknown and unknowable to DEFENDANT. Such injuries, if any, were not reasonably  
25 foreseeable to DEFENDANT.

26 THIRTY-FIFTH AFFIRMATIVE DEFENSE

27 At all times relevant, DEFENDANT's acts and omissions were in conformity with all  
28 government statutes and regulations and all industry standards based upon the state of knowledge

1 existing at the time of the acts or omissions.

2 THIRTY-SIXTH AFFIRMATIVE DEFENSE

3 Plaintiffs have failed to join all parties necessary for full and just adjudication of the  
4 purported causes of action asserted in the Complaint.

5 THIRTY-SEVENTH AFFIRMATIVE DEFENSE

6 DEFENDANT alleges that plaintiffs have directed, ordered, approved and/or ratified  
7 DEFENDANT's conduct and plaintiffs are therefore estopped from asserting their claims alleged  
8 in the Complaint as a result of his own acts, conduct or omissions.

9 THIRTY-EIGHTH AFFIRMATIVE DEFENSE

10 DEFENDANT alleges that plaintiff's claims, or some of them, are barred by the provisions  
11 of California Code of Civil Procedure §361.

12 THIRTY-NINTH AFFIRMATIVE DEFENSE

13 DEFENDANT refers to and incorporates herein each and every affirmative defense  
14 pleaded by the other parties herein to the extent that such defenses are not inconsistent with the  
15 matters stated herein.

16 FORTIETH AFFIRMATIVE DEFENSE

17 DEFENDANT alleges that it presently has insufficient knowledge or information on which  
18 to form a belief as to whether it may have additional, as yet unasserted defenses available.  
19 DEFENDANT reserves herein the right to assert additional defenses in the event discovery  
20 indicates that they would be appropriate.

21 WHEREFORE, DEFENDANT prays:

22 (1) That plaintiffs take nothing by this Complaint;

23 (2) That Judgment be entered in favor of DEFENDANT;

24 (3) For recovery of DEFENDANT's costs of suit;

25 (4) For appropriate credits and set-offs arising out of any payment of Workers'

26 Compensation benefits, or otherwise, as alleged above; and

27 ///

28 ///

1 (5) For such other and further relief as the Court deems just and proper.

2 Dated: January 23, 2008

VASQUEZ & ESTRADA

3

4

By: /s/ Paul J. Gamba

5

Paul J. Gamba

6

Attorneys for Defendant

7

LAMONS GASKET COMPANY

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# **EXHIBIT 44**

Stephen J. Foley, Esq., SBN 220752  
 Lori A. Cataldo, Esq. SBN 218533  
 Sabrina L. Axt, Esq. SBN 238186  
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Attorneys for Defendant  
**KELLY-MOORE PAINT COMPANY, INC.**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF SAN FRANCISCO**

THOMAS JORGENSEN and PATRICIA )  
 JORGENSEN, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 A.W. CHESTERTON COMPANY, et al., )  
 )  
 Defendants. )

Case No. CGC-08-274494

**"Asbestos-Related Case"**

**ANSWER OF KELLY-MOORE PAINT  
 COMPANY, INC. TO COMPLAINT FOR  
 DAMAGES (NEGLIGENCE; STRICT  
 LIABILITY; PUNITIVE DAMAGES; LOSS  
 OF CONSORTIUM)- ASBESTOS AND  
 REQUEST FOR JURY TRIAL-ASBESTOS**

COMES NOW Defendant, KELLY-MOORE PAINT COMPANY, INC. [hereinafter  
 "Defendant"] and answering Plaintiffs' Complaint on file herein, admits, denies, and alleges as follows:

Whenever "Plaintiff" is used in this Answer, that reference embraces each Plaintiff individually  
 as well as collectively, plus the words "and each of them."

Under the provisions of Section 431.30(d), California Code of Civil Procedure, this answering  
 Defendant denies each and every allegation of Plaintiff's complaint and the whole thereof, and denies  
 that Plaintiff has been damaged in any sum or amount whatsoever, or at all.

**GENERAL DENIAL**

Under the provisions of Section 431.30(d), California Code of Civil Procedure, this answering  
 Defendant denies each and every allegation of Plaintiffs' complaint and the whole thereof, and denies

1 that Plaintiffs have been damaged in any sum or amount whatsoever, or at all.

2 FIRST AFFIRMATIVE DEFENSE

3 1. That any and all events and happenings in connection with the allegations contained in  
4 Plaintiffs' complaint and the resulting injuries and damages, if any, referred to therein, were proximately  
5 caused and contributed to by the negligence of the Plaintiffs, thereby barring or reducing Plaintiffs'  
6 recovery herein.

7 SECOND AFFIRMATIVE DEFENSE

8 2. Plaintiffs voluntarily assumed the risk of any then-existing conditions alleged in the  
9 complaint with full knowledge thereof, thereby proximately causing the injuries and damages, if any,  
10 complained of by Plaintiffs and Plaintiffs are thereby barred from recovery herein.

11 THIRD AFFIRMATIVE DEFENSE

12 3. Plaintiffs acknowledged, ratified, consented to, and acquiesced in the alleged acts or  
13 omissions, if any, of this answering Defendant, thus barring Plaintiffs from any relief as prayed for  
14 herein.

15 FOURTH AFFIRMATIVE DEFENSE

16 4. Plaintiffs' action, and each alleged cause of action, is barred by the applicable statute of  
17 limitations, including, but not limited to, Code of Civil Procedure, Sections 338(1), 338(4), 339(1),  
18 340(3), 340.2, 343, 353, 361, and California Commercial Code, Section 2725.

19 FIFTH AFFIRMATIVE DEFENSE

20 5. Any loss, injury or damage to Plaintiffs was proximately caused or contributed to by the  
21 negligent or other tortious acts, omissions, conduct or products of persons, entities or parties other than  
22 this answering Defendant, and that each, any, and all damages recoverable by Plaintiffs must be  
23 diminished in proportion to the amount of fault attributable to said other persons, entities or parties, and  
24 there must be apportioned among all such persons, entities and parties the amount of damages attributed  
25 to them as an offset against damages, if any, awarded against this answering Defendant.

26 SIXTH AFFIRMATIVE DEFENSE

27 6. Plaintiffs are barred from recovery herein by virtue of the application of the Doctrine of  
28 Laches (inexcusable delay and prejudice to Defendant).



1 SEVENTH AFFIRMATIVE DEFENSE

2 7. The court lacks subject matter jurisdiction over the matters alleged in the complaint  
3 because the complaint and each alleged cause of action against Defendant is barred by the provisions of  
4 California Labor Code, Sections 3600, et seq.

5 EIGHTH AFFIRMATIVE DEFENSE

6 8. Any loss, injury, or damage, if any, incurred by Plaintiffs was the result of superseding or  
7 intervening causes arising from the negligent or willful acts or omissions of other parties which  
8 Defendant neither controlled nor had the right to control, and that said loss, injury or damage was not  
9 proximately or legally caused by any act, omission, or other conduct of Defendant.

10 NINTH AFFIRMATIVE DEFENSE

11 9. Plaintiffs are barred from recovery herein by virtue of the fact that all products sold by  
12 this Defendant were produced in conformity with specifications provided to this answering Defendant  
13 by the government of the United States of America pursuant to its war powers. Any defect in said  
14 products was caused by deficiencies in the specifications supplied to Defendant, which deficiencies were  
15 neither known to Defendant nor discoverable by Defendant with the exercise of reasonable care.

16 TENTH AFFIRMATIVE DEFENSE

17 10. The complaint fails to state facts sufficient to constitute a cause of action against this  
18 answering Defendant.

19 ELEVENTH AFFIRMATIVE DEFENSE

20 11. The complaint, and each cause of action thereof, which is admittedly based upon a lack  
21 of identification of the manufacturer of the alleged injury-causing product, fails to state facts sufficient  
22 to constitute a cause of action in that Plaintiffs have asserted a claim for relief which, if granted, would  
23 contravene Defendant's constitutional rights to substantive and procedural due process of law as  
24 preserved for Defendant by the Fourteenth Amendment to the United States Constitution and by Article  
25 I, Section 7, of the Constitution of the State of California.

26 TWELFTH AFFIRMATIVE DEFENSE

27 12. The complaint, and each cause of action thereof, fails to state facts sufficient to constitute  
28 a cause of action in that Plaintiffs have asserted claims for relief which, if granted, would constitute a

1 denial by this Court of Defendant's constitutional right to equal protection of the laws as preserved by  
2 the Fourteenth Amendment to the United States Constitution, and by Article I, Section 7, of the  
3 Constitution of the State of California.

4 **THIRTEENTH AFFIRMATIVE DEFENSE**

5 13. The complaint, and each cause of action thereof, which is admittedly based upon a lack  
6 of identification of the manufacturer of the alleged injury-causing product, fails to state facts sufficient  
7 to constitute a cause of action in that Plaintiffs have asserted claims for relief which, if granted, would  
8 constitute the taking of private property for public use without just compensation in contravention of the  
9 Fifth and Fourteenth Amendments to the United States Constitution and Article I, Sections 7 and 19, of  
10 the Constitution of the State of California, and the applicable California statutes.

11 **FOURTEENTH AFFIRMATIVE DEFENSE**

12 14. If Defendant has purportedly been named or served in this action as a Doe Defendant,  
13 such effort by Plaintiffs is invalid on the grounds that Plaintiffs knew, or should have known, of the  
14 identity of Defendant and of his alleged causes of action against Defendant at the time of the filing of  
15 the complaint.

16 **FIFTEENTH AFFIRMATIVE DEFENSE**

17 15. If Plaintiffs sustained any injury or illness attributable to the use of any product  
18 manufactured by Defendant, which allegations are expressly denied, the injuries were solely caused by  
19 and attributable to the unreasonable and improper use which was made of said products, and each of  
20 them.

21 **SIXTEENTH AFFIRMATIVE DEFENSE**

22 16. Plaintiffs were advised, informed, and warned of any potential hazards and/or dangers, if  
23 any there were, associated with the normal or foreseeable use, handling, and storage of the products,  
24 substances, and equipment described in the complaint.

25 **SEVENTEENTH AFFIRMATIVE DEFENSE**

26 17. The product involved was materially altered or changed by a party or parties other than,  
27 and without the permission of, this answering Defendant, its employees, servants, or other agents, and

28 ///

1 such alteration or change created the alleged defect, if any, which was the proximate or legal cause of  
2 Plaintiffs' injuries, or damages, if any.

3 EIGHTEENTH AFFIRMATIVE DEFENSE

4 18. The products, substances, and equipment referred to in the complaint were properly  
5 designed and manufactured, and safe for the purpose intended. Said products, substances, and  
6 equipment were modified, altered, misused, abused and/or improperly maintained by Plaintiffs or others,  
7 and said conduct was not reasonably foreseeable to Defendant and proximately caused or contributed to  
8 the injuries, losses, and damages complained of, if any there were, thus barring Plaintiffs' recovery  
9 herein.

10 NINETEENTH AFFIRMATIVE DEFENSE

11 19. Plaintiffs failed to give Defendant reasonably prompt notice of the breaches of warranty,  
12 if any, alleged in the complaint.

13 TWENTIETH AFFIRMATIVE DEFENSE

14 20. Plaintiffs were not in privity of contract with Defendant and said lack of privity bars  
15 Plaintiffs' recovery herein upon any theory of warranty.

16 TWENTY-FIRST AFFIRMATIVE DEFENSE

17 21. Plaintiffs failed to mitigate their damages, if any, in that he failed to use reasonable  
18 diligence in caring for his injuries and reasonable means to prevent their aggravation or to accomplish  
19 their healing.

20 TWENTY-SECOND AFFIRMATIVE DEFENSE

21 22. Any exposure of Plaintiffs to products sold or distributed by this Defendant was so  
22 minimal as to be insufficient to establish by a reasonable degree of probability that any such product  
23 caused any alleged injury, damage, or loss to Plaintiff.

24 TWENTY-THIRD AFFIRMATIVE DEFENSE

25 23. Products sold or distributed by this Defendant were not a substantial factor in bringing  
26 about the injuries and damages complained of by Plaintiff, and, therefore, this Defendant may not be  
27 held liable to Plaintiffs as alleged.

28 ///

## 1 TWENTY-FOURTH AFFIRMATIVE DEFENSE

2 24. The state of the medical, scientific, and industrial knowledge and practice was at all  
3 material times such that Defendant neither breached any alleged duty owed Plaintiff, nor knew, nor  
4 could have known, that its product(s) presented a foreseeable risk of harm to Plaintiffs in the normal and  
5 expected use of such product(s).

## 6 TWENTY-FIFTH AFFIRMATIVE DEFENSE

7 25. Any products, substances, or equipment manufactured, formulated, sold or distributed by  
8 this answering Defendant were made consistent with the state of the art applicable to said products,  
9 substances, or equipment at the time of their manufacture, sale, formulation, or distribution.

## 10 TWENTY-SIXTH AFFIRMATIVE DEFENSE

11 26. If this Defendant is responsible to Plaintiffs', which responsibility is expressly denied,  
12 this Defendant shall be liable to Plaintiffs only for the amount of non-economic damages allocated to  
13 this Defendant in direct proportion to this Defendant's percentage of fault, if any. (California Civil  
14 Code, Sections 1431, et seq.)

## 15 TWENTY-SEVENTH AFFIRMATIVE DEFENSE

16 27. At the time and place of the happening of the occurrences and injuries alleged in the  
17 complaint, and all times material thereto, Plaintiffs were employed by various employers, the names of  
18 which are unknown to this Defendant, and working within the course and scope of his employment  
19 and/or employments. Said employer and/or employers and Plaintiffs were subject to the provisions of  
20 the Workers' Compensation Act of the State of California and Plaintiffs were entitled to receive  
21 Workers' Compensation benefits from his employers. Certain sums have been paid to or on behalf of  
22 Plaintiffs herein under the applicable provisions of the Labor Code of the State of California. Said  
23 employer and/or employers and each of them were negligent, careless, and at fault in and about the  
24 matters referred to in the complaint and such negligence, carelessness, and fault proximately and  
25 concurrently contributed to and caused the happening of the incidents complained of by Plaintiff, if any  
26 there were. By these premises, any judgment rendered in favor of Plaintiffs herein must be reduced by  
27 any benefits or payments made or to be made to Plaintiffs by Plaintiffs' employer's or employers'  
28 compensation carrier under the authority of Witt vs. Jackson (1961) 57 Cal.2d 57 [17 Cal.Rptr. 369, 360

1 P.2d 641].

2 TWENTY-EIGHTH AFFIRMATIVE DEFENSE

3 28. Plaintiffs have received, or in the future may receive, Workers' Compensation benefits  
4 from Defendant under the Labor Code of the State of California as a consequence of the alleged  
5 industrial injury referred to in the complaint, and, in the event Plaintiffs are awarded damages against  
6 Defendant, Defendant claims a credit against this award to the extent that Defendant is barred from  
7 enforcing its rights to reimbursement for Workers' Compensation benefits that Plaintiffs have received  
8 or may in the future receive.

9 TWENTY-NINTH AFFIRMATIVE DEFENSE

10 29. The Plaintiffs' employer or employers, by reason of the advise, information, warnings  
11 and use, handling, and storage information given to them, and by reason of their own long standing and  
12 continuous experience with the products, substances, and equipment referred to in the complaint, are and  
13 were sophisticated users, handlers, and storers of any and all such products, substances, and equipment,  
14 and thereby acquired a separate and affirmative duty to warn, advise, and inform Plaintiffs of any  
15 potential harmful effects from the mishandling, misstorage, and/or misuse of the subject property, if any.  
16 Said employer failed to so warn Plaintiffs and thereby breached said duty, and said failure and breach  
17 did directly and proximately cause all damages, injuries, and losses complained of, if any there were.

18 THIRTIETH AFFIRMATIVE DEFENSE

19 30. At all times relative to matters in the complaint, all of Plaintiffs' employers were  
20 sophisticated users of asbestos-containing products, and said employers' negligence in providing the  
21 product to their employees in a negligent, careless, and reckless manner was a superseding and  
22 intervening cause of Plaintiffs' injuries, if any there were.

23 THIRTY-FIRST AFFIRMATIVE DEFENSE

24 31. As between Plaintiffs and Defendant, the law applicable to this action is the law as it  
25 existed during the period this Defendant engaged, if at all, in the manufacture, sale, or distribution of  
26 asbestos-containing products to which the Plaintiffs claim exposure. It is unlawful, inequitable, and in  
27 violation of Defendant's contractual, statutory, and constitutional rights to apply principles of law other  
28 than or in a manner different from those which existed for the period in which Defendant manufactured,

1 sold, or distributed products to which Plaintiffs claim exposure.

2 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

3 32. Defendant denies any and all liability to the extent that Plaintiffs assert Defendant's  
4 alleged liability as a successor in business, successor in product line, or a portion thereof; assign,  
5 predecessor, predecessor in business, predecessor in product line, or a portion thereof; parent, alter ego,  
6 subsidiary, wholly or partially owned by, or the whole or partial owner of or member in an entity  
7 researching, studying, manufacturing, fabricating, designing, labeling, assembling, distributing, leasing,  
8 buying, offering for sale, selling, inspecting, servicing, installing, contracting, or installation, repairing,  
9 marketing, warranting, re-branding, manufacturing for others, packaging and advertising a certain  
10 substance, the generic name of which is asbestos.

11 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

12 33. To the extent the complaint asserts Defendant's alleged "alternative," "market share," or  
13 "enterprise" liability, the complaint fails to state facts sufficient to constitute a cause of action against  
14 this Defendant.

15 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

16 34. The complaint, and each cause of action thereof, fails to state facts sufficient to constitute  
17 a cause of action against this answering Defendant, in that Plaintiffs have failed to join a substantial  
18 market share of the producers of the product or products to which Plaintiffs were allegedly exposed.

19 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

20 35. The Defendant did not and does not have a substantial percentage of the market for the  
21 asbestos-containing products which allegedly caused Plaintiffs' injuries. Therefore, Defendant may not  
22 be held liable to Plaintiffs based on this Defendant's alleged percentage share of the applicable market.

23 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

24 36. Plaintiffs' alleged cause of action seeking punitive damages against this Defendant does  
25 not state facts sufficient to constitute a cause of action against this answering Defendant.

26 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

27 37. The causes of action asserted herein by Plaintiffs fail to state facts sufficient to constitute  
28 a cause of action in that Plaintiffs have asserted claims for punitive damages which, if granted, would

1 violate the prohibition against laws impairing the obligation of contracts set forth in Article I, Section  
2 10, of the United States Constitution.

3 THIRTY-EIGHTH AFFIRMATIVE DEFENSE

4 38. Plaintiffs' claim for punitive or exemplary damages, if any, alleged by Plaintiffs is barred  
5 by the due process clause of the Fourteenth Amendment to the United States Constitution.

6 THIRTY-NINTH AFFIRMATIVE DEFENSE

7 39. Plaintiffs' claim for punitive or exemplary damages, if any, alleged by Plaintiffs is barred  
8 by the proscription of the Eighth Amendment to the United States Constitution, as applied to the States  
9 through the Fourteenth Amendment, prohibiting the imposition of excessive fines.

10 FORTIETH AFFIRMATIVE DEFENSE

11 40. Plaintiffs' claim for punitive or exemplary damages, if any, alleged by Plaintiffs is barred  
12 by the "double jeopardy" clause of the Fifth Amendment to the United States Constitution, as applied to  
13 the States through the Fourteenth Amendment.

14 FORTY-FIRST AFFIRMATIVE DEFENSE

15 41. The complaint fails to state facts sufficient to constitute a cause of action to invoke the  
16 maritime/admiralty laws of the United States.

17 FORTY-SECOND AFFIRMATIVE DEFENSE

18 42. Plaintiffs herein have failed to join indispensable parties (California Code of Civil  
19 Procedure, Section 389) and the complaint is thereby defective, and Plaintiffs are thereby precluded  
20 from any recovery whatsoever as prayed for herein.

21 FORTY-THIRD AFFIRMATIVE DEFENSE

22 43. Plaintiffs have no standing nor right to sue for fraud and conspiracy, breach of warranty,  
23 deceit, or any cause of action under California Civil Code, Sections 1708-1710, and therefore the  
24 complaint and each cause of action thereof fails to state facts sufficient to constitute a cause of action  
25 against this answering Defendant.

26 FORTY-FOURTH AFFIRMATIVE DEFENSE

27 44. Plaintiffs herein lack legal capacity to sue and is not a real party in interest and is thereby  
28 precluded from any recovery whatsoever as prayed for herein.

1 FORTY-FIFTH AFFIRMATIVE DEFENSE

2 45. Fraud and conspiracy do not constitute a separate and distinct form of damages from  
3 general damages, and, therefore, the prayer for fraud and conspiracy in addition to general  
4 damages does not sufficiently support or constitute a separate claim for damages against this answering  
5 Defendant, but is simply cumulative and included in general damages.

6 WHEREFORE, Defendant prays:

- 7 (1) That plaintiffs take nothing by this Complaint;  
8 (2) That Judgment be entered in favor of Defendant;  
9 (3) For recovery of Defendant's costs of suit;  
10 (4) For appropriate credits and set-offs arising out of any payment of Worker's  
11 Compensation benefits as alleged above; and  
12 (5) For such other and further relief as the Court deems just and proper.

13  
14 **NOTICE OF REQUEST FOR JURY TRIAL**

15 Pursuant to California Code of Civil Procedure §631, KELLY-MOORE PAINT COMPANY,  
16 INC. hereby gives Notice Of Its Request For Trial By Jury.

17  
18 Dated: January 23, 2008

FOLEY & MANSFIELD, P.L.L.P.

19  
20  
21 BY: 

Stephen J. Foley  
Lori A. Cataldo  
Sabrina L. Axt  
Attorneys for Defendant  
KELLY-MOORE PAINT COMPANY, INC.



*Thomas and Patricia Jorgensen v. A.W. Chesterton Company, et al.*  
San Francisco County Superior Case No. CGC-08-274494

**PROOF OF SERVICE BY ELECTRONIC TRANSMISSION**

I, the undersigned, declare as follows:

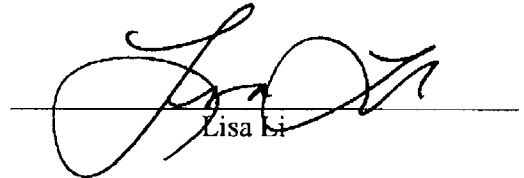
I am employed in the County of Alameda, California, and I am over the age of 18 years and not a party to the within action. My business address is 1111 Broadway, 10th Floor, Oakland, CA 94607.

On the date executed below, I electronically served the documents(s) via LexisNexis File & Serve described as:

**ANSWER OF KELLY-MOORE PAINT COMPANY, INC. TO COMPLAINT FOR DAMAGES (NEGLIGENCE; STRICT LIABILITY; PUNITIVE DAMAGES; LOSS OF CONSORTIUM)-ASBESTOS AND REQUEST FOR JURY TRIAL-ASBESTOS**

on the recipients designated on the Transaction Receipt located on the LexisNexis File& Serve website.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on **January 23**, 2008, at Oakland, California.

  
Lisa Li

# **EXHIBIT 45**

1 MARK P. KRINSKY (State Bar No. 041823)  
2 LAW OFFICES OF MARK P. KRINSKY  
3 One Embarcadero Center, 12<sup>th</sup> Floor  
4 San Francisco, CA 94111  
5 Telephone: 415-217-0060

6  
7 Attorneys for Defendant  
8 SAN FRANCISCO GRAVEL COMPANY

9  
10  
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO  
13  
14 UNLIMITED JURISDICTION

15 THOMAS JORGENSEN AND PATRICIA  
16 JORGENSEN,

17  
18 Plaintiffs,

19 vs.

20 A.W CHESTERTON COMPANY, et al.,  
21  
22 Defendants.

Case No.: 08-274494

DEFENDANT SAN FRANCISCO  
GRAVEL COMPANY'S OBJECTION TO  
STIPULATION OF HEARING BY  
COURT COMMISSIONER

[Pursuant to Local Rules 3.6 & 8.14(D)]

[ASBESTOS-RELATED CASE]

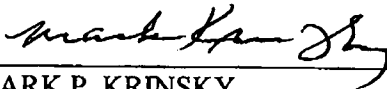
23 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

24 Defendant SAN FRANCISCO GRAVEL COMPANY does not stipulate and hereby  
25 objects pursuant to San Francisco Superior Court Local Rules 3.6 and 8.14 (D) to the assignment  
26 of any pre-trial or discovery matter for determination or hearing by a Court Commissioner.

27 DATED: January 9, 2008.

LAW OFFICES OF MARK P. KRINSKY

28 By

  
MARK P. KRINSKY  
Attorneys for Defendant  
SAN FRANCISCO GRAVEL COMPANY

1 Re: JORGENSEN, THOMAS and PATRICIA v. A.W CHESTERTON CO., et al.,  
2 San Francisco Superior Court No. 08-274494

3 **PROOF OF SERVICE BY ELECTRONIC TRANSMISSION**

4 I declare that:

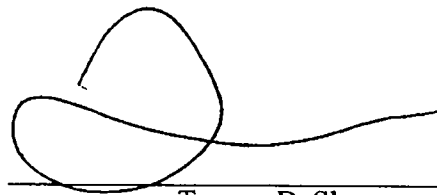
5 I am a citizen of the United States, employed in the City and County of San Francisco,  
6 over the age of eighteen years, and not a party to the within cause. My business address is One  
7 Embarcadero Center, 12<sup>TH</sup> Floor, San Francisco, California, 94111. On January 16, 2008, I  
8 electronically served the document(s) via LexisNexis File & Serve described as:

9 **DEFENDANT SAN FRANCISCO GRAVEL COMPANY'S OBJECTION  
10 TO STIPULATION OF HEARING BY COURT COMMISSIONER**

11 on the recipients designated below as described on the Transaction Receipt located on the  
12 LexisNexis File & Serve website:

13 Jeffrey A. Kaiser, Esq.  
14 LEVIN, SIMES, KAISER & GORNICK, LLP  
15 44 Montgomery St., 36<sup>th</sup> Fl  
San Francisco, CA 94104

16 I declare under penalty of perjury pursuant to the laws of the State of California that the  
17 foregoing is true and correct and that this declaration was executed on January 16, 2008 at San  
18 Francisco, California.

19  
20  
21 

22 Tamara D. Slye  
23  
24  
25  
26  
27  
28

# **EXHIBIT 46**

1 MARK P. KRINSKY (State Bar No. 041823)  
2 LAW OFFICES OF MARK P. KRINSKY  
3 One Embarcadero Center, 12<sup>th</sup> Floor  
4 San Francisco, CA 94111  
5 Telephone: 415-217-0060

6  
7 Attorneys for Defendant  
8 SAN FRANCISCO GRAVEL COMPANY  
9  
10

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO  
13 UNLIMITED JURISDICTION  
14

15 THOMAS JORGENSEN AND PATRICIA  
16 JORGENSEN,

17 Plaintiffs,

18 vs.

19 A.W CHESTERTON COMPANY, et al.,  
20 Defendants.  
21 \_\_\_\_\_/

Case No.: 08-274494

DEFENDANT SAN FRANCISCO  
GRAVEL COMPANY'S ANSWER TO  
COMPLAINT FOR DAMAGES  
(ASBESTOS)

[ASBESTOS-RELATED CASE]

22 COMES NOW Defendant, SAN FRANCISCO GRAVEL COMPANY, and answering  
23 Plaintiffs' Complaint on file herein, admits, denies, and alleges as follows:

24 Whenever "Plaintiff" is used in this Answer, that reference embraces each Plaintiff  
25 individually as well as collectively, plus the words "and each of them."

26 Under the provisions of Section 431.30(d), California Code of Civil Procedure, this  
27 answering Defendant denies each and every allegation of Plaintiff's complaint and the whole  
28 thereof, and denies that Plaintiff has been damaged in any sum or amount whatsoever, or at all.

**FIRST AFFIRMATIVE DEFENSE**

1. That any and all events and happenings in connection with the allegations  
contained in Plaintiff's complaint and the resulting injuries and damages, if any, referred to  
therein, were proximately caused and contributed to by the negligence of the Plaintiff thereby

1 barring or reducing Plaintiff's recovery herein.

2 **SECOND AFFIRMATIVE DEFENSE**

3 2. Plaintiff voluntarily assumed the risk of any then-existing conditions alleged in the  
4 complaint with full knowledge thereof, thereby proximately causing the injuries and damages, if  
5 any, complained of by Plaintiff and Plaintiff is thereby barred from recovery herein.

6 **THIRD AFFIRMATIVE DEFENSE**

7 3. Plaintiff acknowledged, ratified, consented to, and acquiesced in the alleged acts  
8 or omissions, if any, of this answering Defendant, thus barring Plaintiff from any relief as prayed  
9 for herein.

10 **FOURTH AFFIRMATIVE DEFENSE**

11 4. Plaintiff's action, and each alleged cause of action, is barred by the applicable  
12 statute of limitations, including, but not limited to, Code of Civil Procedure, Sections 338(1),  
13 338(4), 339(1), 340(3), 340.2, 343, 353, and California Commercial Code, Section 2725.

14 **FIFTH AFFIRMATIVE DEFENSE**

15 5. Any loss, injury or damage to Plaintiff was proximately caused or contributed to  
16 by the negligent or other tortious acts, omissions, conduct or products of persons, entities or  
17 parties other than this answering Defendant, and that each, any, and all damages recoverable by  
18 Plaintiff must be diminished in proportion to the amount of fault attributable to said other  
19 persons, entities or parties, and there must be apportioned among all such persons, entities and  
20 parties the amount of damages attributed to them as an offset against damages, if any, awarded  
21 against this answering Defendant.

22 **SIXTH AFFIRMATIVE DEFENSE**

23 6. Plaintiff is barred from recovery herein by virtue of the application of the Doctrine  
24 of Laches (inexcusable delay and prejudice to Defendant).

25 **SEVENTH AFFIRMATIVE DEFENSE**

26 7. The court lacks subject matter jurisdiction over the matters alleged in the  
27 complaint because the complaint and each alleged cause of action against Defendant is barred by  
28 the provisions of California Labor Code, Sections 3600, et seq.

**EIGHTH AFFIRMATIVE DEFENSE**

8. Any loss, injury, or damage, if any, incurred by Plaintiff was the result of superseding or intervening causes arising from the negligent or willful acts or omissions of other parties which Defendant neither controlled nor had the right to control, and that said loss, injury or damage was not proximately or legally caused by any act, omission, or other conduct of Defendant.

**NINTH AFFIRMATIVE DEFENSE**

9. Plaintiff is barred from recovery herein by virtue of the fact that all products sold by this Defendant were produced in conformity with specifications provided to this answering Defendant by the government of the United States of America pursuant to its war powers. Any defect in said products was caused by deficiencies in the specifications supplied to Defendant, which deficiencies were neither known to Defendant nor discoverable by Defendant with the exercise of reasonable care.

**TENTH AFFIRMATIVE DEFENSE**

10. The complaint fails to state facts sufficient to constitute a cause of action against this answering Defendant.

**ELEVENTH AFFIRMATIVE DEFENSE**

11. The complaint, and each cause of action thereof, which is admittedly based upon a lack of identification of the manufacturer of the alleged injury-causing product, fails to state facts sufficient to constitute a cause of action in that Plaintiff has asserted a claim for relief which, if granted, would contravene Defendant's constitutional rights to substantive and procedural due process of law as preserved for Defendant by the Fourteenth Amendment to the United States Constitution and by Article I, Section 7, of the Constitution of the State of California.

**TWELFTH AFFIRMATIVE DEFENSE**

12. The complaint, and each cause of action thereof, fails to state facts sufficient to constitute a cause of action in that Plaintiff has asserted claims for relief which, if granted, would constitute a denial by this Court of Defendant's constitutional right to equal protection of the laws as preserved by the Fourteenth Amendment to the United States Constitution, and by Article I,



1 Section 7, of the Constitution of the State of California.

2 **THIRTEENTH AFFIRMATIVE DEFENSE**

3 13. The complaint, and each cause of action thereof, which is admittedly based upon a  
4 lack of identification of the manufacturer of the alleged injury-causing product, fails to state facts  
5 sufficient to constitute a cause of action in that Plaintiff has asserted claims for relief which, if  
6 granted, would constitute the taking of private property for public use without just compensation  
7 in contravention of the Fifth and Fourteenth Amendments to the United States Constitution and  
8 Article I, Sections 7 and 19, of the Constitution of the State of California, and the applicable  
9 California statutes.

10 **FOURTEENTH AFFIRMATIVE DEFENSE**

11 14. If Defendant has purportedly been named or served in this action as a Doe  
12 Defendant, such effort by Plaintiff is invalid on the grounds that Plaintiff knew, or should have  
13 known, of the identity of Defendant and of his alleged causes of action against Defendant at the  
14 time of the filing of the complaint.

15 **FIFTEENTH AFFIRMATIVE DEFENSE**

16 15. If Plaintiff sustained any injury or illness attributable to the use of any product  
17 manufactured by Defendant, which allegations are expressly denied, the injuries were solely  
18 caused by and attributable to the unreasonable and improper use which was made of said  
19 products, and each of them.

20 **SIXTEENTH AFFIRMATIVE DEFENSE**

21 16. Plaintiff was advised, informed, and warned of any potential hazards and/or  
22 dangers, if any there were, associated with the normal or foreseeable use, handling, and storage of  
23 the products, substances, and equipment described in the complaint.

24 **SEVENTEENTH AFFIRMATIVE DEFENSE**

25 17. The product involved was materially altered or changed by a party or parties other  
26 than, and without the permission of, this answering Defendant, its employees, servants, or other  
27 agents, and such alteration or change created the alleged defect, if any, which was the proximate  
28 or legal cause of Plaintiff's injuries, or damages, if any.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

18. The products, substances, and equipment referred to in the complaint were properly designed and manufactured, and safe for the purpose intended. Said products, substances, and equipment were modified, altered, misused, abused and/or improperly maintained by Plaintiff or others, and said conduct was not reasonably foreseeable to Defendant and proximately caused or contributed to the injuries, losses, and damages complained of, if any there were, thus barring Plaintiff's recovery herein.

**NINETEENTH AFFIRMATIVE DEFENSE**

19. Plaintiff failed to give Defendant reasonably prompt notice of the breaches of warranty, if any, alleged in the complaint.

**TWENTIETH AFFIRMATIVE DEFENSE**

20. Plaintiff was not in privity of contract with Defendant and said lack of privity bars Plaintiff's recovery herein upon any theory of warranty.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

21. Plaintiff failed to mitigate his damages, if any, in that he failed to use reasonable diligence in caring for his injuries and reasonable means to prevent their aggravation or to accomplish their healing.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

22. Any exposure of Plaintiff to products sold or distributed by this Defendant was so minimal as to be insufficient to establish by a reasonable degree of probability that any such product caused any alleged injury, damage, or loss to Plaintiff.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

23. Products sold or distributed by this Defendant were not a substantial factor in bringing about the injuries and damages complained of by Plaintiff, and, therefore, this Defendant may not be held liable to Plaintiff as alleged.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

24. The state of the medical, scientific, and industrial knowledge and practice was at all material times such that Defendant neither breached any alleged duty owed Plaintiff, nor

1 knew, nor could have known, that its product(s) presented a foreseeable risk of harm to Plaintiff  
2 in the normal and expected use of such product(s).

3 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

4 25. Any products, substances, or equipment manufactured, formulated, sold or  
5 distributed by this answering Defendant were made consistent with the state of the art applicable  
6 to said products, substances, or equipment at the time of their manufacture, sale, formulation, or  
7 distribution.

8 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

9 26. If this Defendant is responsible to Plaintiff, which responsibility is expressly  
10 denied, this Defendant shall be liable to Plaintiff only for the amount of non-economic damages  
11 allocated to this Defendant in direct proportion to this Defendant's percentage of fault, if any.  
12 (California Civil Code, Sections 1431, et seq.)

13 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

14 27. At the time and place of the happening of the occurrences and injuries alleged in  
15 the complaint, and all times material thereto, Plaintiff was employed by various employers, the  
16 names of which are unknown to this Defendant, and working within the course and scope of his  
17 employment and/or employments. Said employer and/or employers and Plaintiff were subject to  
18 the provisions of the Workers' Compensation Act of the State of California and Plaintiff was  
19 entitled to receive Workers' Compensation benefits from his employers. Certain sums have been  
20 paid to or on behalf of Plaintiff herein under the applicable provisions of the Labor Code of the  
21 State of California. Said employer and/or employers and each of them were negligent, careless,  
22 and at fault in and about the matters referred to in the complaint and such negligence,  
23 carelessness, and fault proximately and concurrently contributed to and caused the happening of  
24 the incidents complained of by Plaintiff, if any there were. By these premises, any judgment  
25 rendered in favor of Plaintiff herein must be reduced by any benefits or payments made or to be  
26 made to Plaintiff by Plaintiff's employer's or employers' compensation carrier under the authority  
27 of Witt vs. Jackson (1961) 57 Cal.2d 57 [17 Cal.Rptr. 369, 360 P.2d 641].

28 ///

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

28. Plaintiff has received, or in the future may receive, Workers' Compensation benefits from Defendant under the Labor Code of the State of California as a consequence of the alleged industrial injury referred to in the complaint, and, in the event Plaintiff is awarded damages against Defendant, Defendant claims a credit against this award to the extent that Defendant is barred from enforcing its rights to reimbursement for Workers' Compensation benefits that Plaintiff has received or may in the future receive.

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

29. The Plaintiff's employer or employers, by reason of the advise, information, warnings and use, handling, and storage information given to them, and by reason of their own long standing and continuous experience with the products, substances, and equipment referred to in the complaint, are and were sophisticated users, handlers, and storers of any and all such products, substances, and equipment, and thereby acquired a separate and affirmative duty to warn, advise, and inform Plaintiff of any potential harmful effects from the mishandling, misstorage, and/or misuse of the subject property, if any. Said employer failed to so warn Plaintiff and thereby breached said duty, and said failure and breach did directly and proximately cause all damages, injuries, and losses complained of, if any there were.

**THIRTIETH AFFIRMATIVE DEFENSE**

30. At all times relative to matters in the complaint, all of Plaintiff's employers were sophisticated users of asbestos-containing products, and said employers' negligence in providing the product to their employees in a negligent, careless, and reckless manner was a superseding and intervening cause of Plaintiff's injuries, if any there were.

**THIRTY-FIRST AFFIRMATIVE DEFENSE**

31. As between Plaintiff and Defendant, the law applicable to this action is the law as it existed during the period this Defendant engaged, if at all, in the manufacture, sale, or distribution of asbestos-containing products to which the Plaintiff claims exposure. It is unlawful, inequitable, and in violation of Defendant's contractual, statutory, and constitutional rights to apply principles of law other than or in a manner different from those which existed for

1 the period in which Defendant manufactured, sold, or distributed products to which Plaintiff  
2 claims exposure.

3 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

4 32. Defendant denies any and all liability to the extent that Plaintiff asserts  
5 Defendant's alleged liability as a successor in business, successor in product line, or a portion  
6 thereof; assign, predecessor, predecessor in business, predecessor in product line, or a portion  
7 thereof; parent, alter ego, subsidiary, wholly or partially owned by, or the whole or partial owner  
8 of or member in an entity researching, studying, manufacturing, fabricating, designing, labeling,  
9 assembling, distributing, leasing, buying, offering for sale, selling, inspecting, servicing,  
10 installing, contracting, or installation, repairing, marketing, warranting, re-branding,  
11 manufacturing for others, packaging and advertising a certain substance, the generic name of  
12 which is asbestos.

13 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

14 33. To the extent the complaint asserts Defendant's alleged "alternative," "market  
15 share," or "enterprise" liability, the complaint fails to state facts sufficient to constitute a cause of  
16 action against this Defendant.

17 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

18 34. The complaint, and each cause of action thereof, fails to state facts sufficient to  
19 constitute a cause of action against this answering Defendant, in that Plaintiff has failed to  
20 join a substantial market share of the producers of the product or products to which Plaintiff was  
21 allegedly exposed.

22 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

23 35. The Defendant did not and does not have a substantial percentage of the market  
24 for the asbestos-containing products which allegedly caused Plaintiff's injuries. Therefore,  
25 Defendant may not be held liable to Plaintiff based on this Defendant's alleged percentage share  
26 of the applicable market.

27 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

28 36. Plaintiff's alleged cause of action seeking punitive damages against this Defendant

1 does not state facts sufficient to constitute a cause of action against this answering Defendant.

2 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

3 37. The causes of action asserted herein by Plaintiff fail to state facts sufficient to  
4 constitute a cause of action in that Plaintiff has asserted claims for punitive damages which, if  
5 granted, would violate the prohibition against laws impairing the obligation of contracts set forth  
6 in Article I, Section 10, of the United States Constitution.

7 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

8 38. Plaintiff's claim for punitive or exemplary damages, if any, alleged by Plaintiff is  
9 barred by the due process clause of the Fourteenth Amendment to the United States Constitution.

10 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

11 39. Plaintiff's claim for punitive or exemplary damages, if any, alleged by Plaintiff is  
12 barred by the proscription of the Eighth Amendment to the United States Constitution, as applied  
13 to the States through the Fourteenth Amendment, prohibiting the imposition of excessive fines.

14 **FORTIETH AFFIRMATIVE DEFENSE**

15 40. Plaintiff's claim for punitive or exemplary damages, if any, alleged by Plaintiff is  
16 barred by the "double jeopardy" clause of the Fifth Amendment to the United States Constitution,  
17 as applied to the States through the Fourteenth Amendment.

18 **FORTY-FIRST AFFIRMATIVE DEFENSE**

19 41. The complaint fails to state facts sufficient to constitute a cause of action to invoke  
20 the maritime/admiralty laws of the United States.

21 **FORTY-SECOND AFFIRMATIVE DEFENSE**

22 42. Plaintiff herein has failed to join indispensable parties (California Code of Civil  
23 Procedure, Section 389) and the complaint is thereby defective, and Plaintiff is thereby precluded  
24 from any recovery whatsoever as prayed for herein.

25 **FORTY-THIRD AFFIRMATIVE DEFENSE**

26 43. Plaintiff has no standing nor right to sue for fraud and conspiracy, breach of  
27 warranty, deceit, or any cause of action under California Civil Code, Sections 1708-1710, and  
28 therefore the complaint and each cause of action thereof fails to state facts sufficient to constitute

1 a cause of action against this answering Defendant.

2 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

3 44. Plaintiff herein lacks legal capacity to sue and is not a real party in interest and is  
4 thereby precluded from any recovery whatsoever as prayed for herein.

5 **FORTY-FIFTH AFFIRMATIVE DEFENSE**


6 45. Fraud and conspiracy do not constitute a separate and distinct form of damages  
7 from general damages, and, therefore, the prayer for fraud and conspiracy in addition to general  
8 damages does not sufficiently support or constitute a separate claim for damages against this  
9 answering Defendant, but is simply cumulative and included in general damages.

10 WHEREFORE, this answering Defendant prays that Plaintiff take nothing by virtue of  
11 this complaint on file herein, for its costs of suit herein incurred, and for any other and further  
12 relief as the Court may deem proper.

13 DATED: January 9, 2008.

LAW OFFICES OF MARK P. KRINSKY

14  
15 By

  
16 MARK P. KRINSKY  
17 Attorneys for Defendant  
18 SAN FRANCISCO GRAVEL COMPANY  
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28

1 Re: **JORGENSEN, THOMAS and PATRICIA v. A.W CHESTERTON CO., et al.,**  
2 **San Francisco Superior Court No. 08-274494**

3 **PROOF OF SERVICE BY ELECTRONIC TRANSMISSION**

4 I declare that:

5 I am a citizen of the United States, employed in the City and County of San Francisco,  
6 over the age of eighteen years, and not a party to the within cause. My business address is One  
7 Embarcadero Center, 12<sup>TH</sup> Floor, San Francisco, California, 94111. On January 16, 2008, I  
8 electronically served the document(s) via LexisNexis File & Serve described as:

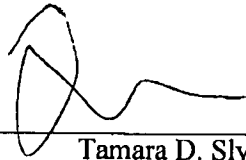
9 **DEFENDANT SAN FRANCISCO GRAVEL COMPANY'S**  
10 **ANSWER TO COMPLAINT FOR DAMAGES (ASBESTOS)**

11 on the recipients designated below as described on the Transaction Receipt located on the  
12 LexisNexis File & Serve website:

13 Jeffrey A. Kaiser, Esq.  
14 LEVIN, SIMES, KAISER & GORNICK, LLP  
15 44 Montgomery St., 36<sup>th</sup> Fl  
San Francisco, CA 94104

16 I declare under penalty of perjury pursuant to the laws of the State of California that the  
17 foregoing is true and correct and that this declaration was executed on January 16, 2008 at San  
18 Francisco, California.

19  
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21  
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24  
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26  
27  
28



Tamara D. Slye



# **EXHIBIT 47**

1 SEDGWICK, DETERT, MORAN & ARNOLD LLP  
2 PAUL J. RIEHLE (State Bar No. 115199)  
3 CHARLES P. MURRIN (State Bar No. 188081)  
4 SEAN PATTERSON (State Bar No. 234565)  
5 One Market Plaza, Steuart Tower, 8th Floor  
6 San Francisco, CA 94105  
7 Telephone: (415) 781-7900  
8 Facsimile: (415) 781-2635

9 Attorneys for Defendant SOCO WEST, INC., fka  
10 BRENNTAG WEST, INC.

11  
12  
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14  
15 IN AND FOR THE COUNTY OF SAN FRANCISCO  
16  
17 (UNLIMITED JURISDICTION)  
18  
19

20 THOMAS JORGENSEN and PATRICIA  
21 JORGENSEN,

22 Plaintiffs,

23 v.

24 A.W. CHESTERTON COMPANY, et al. and  
25 DOES ONE THROUGH THREE  
26 HUNDREDTH, inclusive,

27 Defendants.  
28

CASE NO. CGC 08-274494

**ANSWER TO COMPLAINT FOR  
DAMAGES – NEGLIGENCE, STRICT  
LIABILITY, PUNITIVE DAMAGES,  
LOSS OF CONSORTIUM  
(ASBESTOS)**

29 Defendant SOCO WEST, INC., fka BRENNTAG WEST, INC. (hereafter  
30 “defendant”), answers plaintiff’s Complaint for Damages (Asbestos) (hereafter “complaint”) as  
31 follows:

32 1. Under the provisions of Section 431.30 of the Code of Civil Procedure,  
33 defendant denies each and every and all of the allegations of said complaint and denies that  
34 plaintiff sustained damages in the sum or sums alleged or in any other sum or at all.

35 FIRST AFFIRMATIVE DEFENSE

36 2. Defendant alleges that said complaint and each cause of action therein fails  
37 to state facts sufficient to constitute a cause of action against this defendant.

1 SECOND AFFIRMATIVE DEFENSE

2 3. Defendant alleges that the causes of action, if any, attempted to be stated  
3 and set forth in said complaint are barred by the provisions of the Code of Civil Procedure of the  
4 State of California including, but not limited to, Sections 338(d), 340, and 340.2.

5 THIRD AFFIRMATIVE DEFENSE

6 4. Defendant alleges that the causes of action, if any, attempted to be stated  
7 and set forth in said complaint are barred by the equitable doctrine of laches.

8 FOURTH AFFIRMATIVE DEFENSE

9 5. Defendant alleges that the causes of action, if any, attempted to be stated  
10 and set forth in said complaint are barred in whole or in part by the equitable doctrines of waiver  
11 and estoppel.

12 FIFTH AFFIRMATIVE DEFENSE

13 6. Defendant alleges that plaintiff and others were negligent or otherwise at  
14 fault in and about the matters referred to in said complaint, and that such negligence or other  
15 fault bars or diminishes plaintiff's recovery against this answering defendant.

16 SIXTH AFFIRMATIVE DEFENSE

17 7. Defendant alleges that plaintiff was solely negligent in and about the  
18 matters alleged in said complaint and that such negligence on the part of plaintiff was the sole  
19 proximate cause of the injuries and damages complained of, if any there were.

20 SEVENTH AFFIRMATIVE DEFENSE

21 8. Defendant alleges that plaintiff assumed the risk of the matters referred to  
22 in said complaint, that plaintiff knew and appreciated the nature of the risk, and that plaintiff  
23 voluntarily accepted the risk.

24 EIGHTH AFFIRMATIVE DEFENSE

25 9. Defendant alleges that plaintiff misused and abused the products referred  
26 to in said complaint, and failed to follow instructions, and that such misuse and abuse and failure  
27 to follow instructions on the part of plaintiff proximately caused and contributed to the injuries  
28 and damages complained of, if any there were.

NINTH AFFIRMATIVE DEFENSE

10. Defendant alleges that if plaintiff sustained injuries attributable to the use of any product manufactured, supplied, or distributed by this answering defendant, which allegations are expressly denied, the injuries were solely caused by and attributable to the unreasonable, unforeseeable, and inappropriate purpose and improper use which was made of the product.

TENTH AFFIRMATIVE DEFENSE

11. Defendant alleges that, if there was any negligence proximately causing the injuries or damages complained of, such negligence, if any, was solely that of defendants other than this answering defendant.

ELEVENTH AFFIRMATIVE DEFENSE

12. Defendant alleges that there is no privity between plaintiff and this answering defendant.

TWELFTH AFFIRMATIVE DEFENSE

13. Defendant alleges that it gave no warranties, either express or implied, to plaintiff and that plaintiff, nor others, ever notified defendant of any claims of breach of warranty, if any there were.

THIRTEENTH AFFIRMATIVE DEFENSE

14. Defendant alleges that said complaint and each cause of action therein is barred with respect to this answering defendant by the provisions of state and federal Workers' Compensation statutes including, but not limited to, Sections 3600 *et seq.* of the Labor Code of the State of California, and Section 905(b), Title 33 of the United States Code.

FOURTEENTH AFFIRMATIVE DEFENSE

15. Defendant alleges that, if there was any negligence proximately causing the injuries or damages complained of, such negligence, if any, is collateral negligence, as that term is used and defined in Restatement 2d Torts, Section 426, and derivative authority.

FIFTEENTH AFFIRMATIVE DEFENSE

16. Defendant alleges that at the time of certain matters referred to in the

1 complaint, plaintiff was employed by an employer other than this answering defendant and was  
2 entitled to and received workers' compensation benefits from that employer; and that, if there  
3 was any negligence proximately causing the injuries and damages complained of, if any, such  
4 negligence, if any, was that of that particular employer of plaintiff and not this answering  
5 defendant.

6 SIXTEENTH AFFIRMATIVE DEFENSE

7 17. Defendant alleges that plaintiff's claims, and each of them, in this action  
8 are preempted by federal statutes and regulations governing workplace exposure to asbestos.

9 SEVENTEENTH AFFIRMATIVE DEFENSE

10 18. Defendant alleges that said complaint, to the extent that it seeks exemplary  
11 or punitive damages pursuant to California Civil Code Section 3294 against this answering  
12 defendant, violates defendant's rights to procedural due process under the Fourteenth  
13 Amendment of the United States Constitution, and Article I, Section 7 of the Constitution of the  
14 State of California, and therefore fails to state a cause of action upon which either punitive or  
15 exemplary damages can be awarded.

16 EIGHTEENTH AFFIRMATIVE DEFENSE

17 19. Defendant alleges that said complaint, to the extent that it seeks punitive  
18 or exemplary damages pursuant to California Civil Code Section 3294, violates defendant's  
19 rights to protection from "excessive fines" as provided in the Eighth Amendment of the United  
20 States Constitution and Article I, Section 17 of the Constitution of the State of California, and  
21 violates defendant's rights to substantive due process as provided in the Fifth and Fourteenth  
22 Amendments of the United States Constitution and the Constitution of the State of California,  
23 and therefore fails to state a cause of action upon which either punitive or exemplary damages  
24 can be awarded.

25 NINETEENTH AFFIRMATIVE DEFENSE

26 20. Defendant alleges that said complaint, and each cause of action therein,  
27 fails to state facts sufficient to support an award of punitive or exemplary damages against this  
28 answering defendant.

TWENTIETH AFFIRMATIVE DEFENSE

21. Defendant alleges that the “peculiar risk” doctrine is not applicable to the causes of action attempted to be stated and set forth against this answering defendant, because the injuries and damages complained of in the complaint, if any there were, arose in the course and scope of plaintiff’s employment by an independent contractor.

TWENTY-FIRST AFFIRMATIVE DEFENSE

22. Defendant alleges that the causes of action, if any, attempted to be stated and set forth in said complaint on the theory of alternate entity and/or successor liability fail to state facts sufficient to constitute a cause of action against this answering defendant.

TWENTY-SECOND AFFIRMATIVE DEFENSE

23. Defendant alleges that the causes of action, if any, attempted to be stated and set forth in said complaint on the theory of the dual capacity doctrine fails to state facts sufficient to constitute a cause of action against this answering defendant.

TWENTY-THIRD AFFIRMATIVE DEFENSE

24. Defendant alleges that the causes of action, if any, attempted to be stated and set forth in said complaint against this answering defendant for negligence per se are barred by California Labor Code Section 6304.5, and derivative authority.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

25. Defendant alleges that plaintiff failed to exercise due diligence to mitigate plaintiff’s losses, injuries or damages, if any, and, accordingly, the amount of damages to which plaintiff is entitled, if any, should be reduced by the amount of damages which otherwise would have been mitigated.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

26. Defendant alleges that, at all times relevant to the matters alleged in the complaint, some of plaintiff’s employers were sophisticated users of allegedly asbestos-containing products, and said employers’ negligence in exposing their employees to such products in a negligent, careless and reckless manner was a superseding intervening cause of plaintiff’s injuries, if any.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

27. Defendant alleges that this answering defendant is entitled to set-off any settlement, judgment, or similar amount received by plaintiff against any judgment rendered against this answering defendant in plaintiff's favor.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

28. Defendant will rely upon any and all further defenses that become available or appear during discovery proceedings in this action, and specifically reserves the right to amend this answer for the purpose of asserting any such additional defenses.

WHEREFORE, this answering defendant prays that plaintiff take nothing by reason of their complaint; that this answering defendant be awarded costs of suit herein, and such other and further relief as the court deems just; and, that if this answering defendant is found liable, the degree of its responsibility for the resulting damages be determined and that this answering defendant be held liable only for that amount of the total damages proportionate to its responsibility for the same.

DATED: January 15, 2008

SEDGWICK, DETERT, MORAN & ARNOLD LLP

By: /s/ Sean Patterson

Sean Patterson  
Attorneys for Defendant  
SOCO WEST, INC., fka BRENNTAG WEST,  
INC.

**ELECTRONIC PROOF OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Sedgwick, Detert, Moran & Arnold LLP, One Market Plaza, Steuart Tower, 8th Floor, San Francisco, California 94105. On January 16, 2008, I electronically served the document via LexisNexis File & Serve described as:

**ANSWER TO COMPLAINT FOR DAMAGES – NEGLIGENCE, STRICT LIABILITY,  
PUNITIVE DAMAGES, LOSS OF CONSORTIUM (ASBESTOS)**

on the recipients designated on the Transaction Receipt located on the LexisNexis File & Serve website, including:

Jeffrey A. Kaiser, Esq.  
Anna Maria Costa, Esq.  
Levin Simes Kaiser & Gornick, LLP  
44 Montgomery Street, 36th Floor  
San Francisco, CA 94104

*Attorneys For Plaintiffs*

T: (415) 646-7160  
F: (415) 981-1270

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on January 16, 2008, at San Francisco, California.

/s/ Charlene Bryant

Charlene Bryant



# **EXHIBIT 48**

NAME, ADDRESS, TELEPHONE NUMBER OF ATTORNEY(S)

ANNA M. COSTA (SBN 203741)  
 LEVIN SIMES KAISER & GORNICK, LLP  
 44 MONTGOMERY STREET, 36TH FLOOR  
 SAN FRANCISCO, CA 94104

SPACE BELOW FOR COURT USE ONLY

(415) 646-7160

ATTORNEY(S) FOR: THOMAS JORGENSEN AND PATRICIA  
 JORGENSEN

**AMENDMENT TO  
 COMPLAINT**
**SUPERIOR COURT OF CALIFORNIA,  
 COUNTY OF SAN FRANCISCO**

CASE NUMBER

CGC 08 274494

THOMAS JORGENSEN AND PATRICIA JORGENSEN

A.W. CHESTERTON COMPANY, et al.

vs.

Plaintiff(s)

Defendant(s)

**FICTITIOUS NAME [SEC. 474 C.C.P.]**

Upon filing the complaint herein, plaintiff(s) being ignorant of the true name of a defendant, and having designated said defendant in the complaint by the fictitious name of:

DOE 1

and having discovered the true name of the said defendant to be:

CROWLEY MARITIME CORPORATION

hereby amends the complaint by inserting such true name in place and stead of such incorrect name wherever it appears in said complaint.

ANNA M. COSTA



Attorney(s) for plaintiff(s)

THOMAS JORGENSEN, ET AL.

**INCORRECT NAME [SEC. 473 (a)(1) C.C.P.]**

Plaintiff(s) having designated a defendant in the complaint by the incorrect name of

and having discovered the true name of the said defendant to be

hereby amend(s) the complaint by inserting such true name in place and stead of such incorrect name wherever it appears in said complaint.

Attorney(s) for Plaintiff(s)

**ORDER**

Proper cause appearing, the above amendment to the complaint is allowed.


Dated: \_\_\_\_\_

Judge

# **EXHIBIT 49**

JEFFREY A. KAISER, ESQ. [SBN 160594]  
 ANNA M. COSTA, ESQ. [203741]  
**LEVIN SIMES KAISER & GORNICK, LLP**  
 44 Montgomery Street, 36<sup>th</sup> Floor  
 San Francisco, California 94104  
 Telephone (415) 646-7160  
 Facsimile (415) 981-1270

Attorneys for Plaintiffs  
**THOMAS JORGENSEN AND PATRICIA JORGENSEN**

ENDORSED  
 FILED  
 SAN FRANCISCO COUNTY  
 SUPERIOR COURT  
 2008 JAN -3 AM 12:37  
 GORDON PARK - LL CLERK  
 BY:  DEPUTY CLERK

SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF SAN FRANCISCO  
 (UNLIMITED JURISDICTION)

THOMAS JORGENSEN AND PATRICIA  
 JORGENSEN,

Plaintiffs,

vs.

A. W. CHESTERTON COMPANY, et al.

Defendants.

No. **CGC-08-274494**

PRELIMINARY FACT  
 SHEET NEW FILING/  
ASBESTOS LITIGATION  
 (See General Order No. 129)  
 In Re Complex Asbestos  
 Litigation

**NOTICE**

**TO NEW DEFENDANTS SERVED IN COMPLEX ASBESTOS LITIGATION IN THE  
 SUPERIOR COURT IN AND FOR THE STATE OF CALIFORNIA,  
 CITY AND COUNTY OF SAN FRANCISCO:**

You have been served with process in an action which has been designated by the Court as complex litigation pursuant to Standard 19 of the Standards of Judicial Administration. This litigation bears the caption "In Re: Complex Litigation," [San Francisco Superior Court No. 828684].

This litigation is governed by various general orders, some of which affect the judicial management and/or discovery obligations, including the responsibility to answer interrogatories deemed propounded in the case. You may contact the Court or Designated Defense Counsel, Berry & Berry, Station D, Post Office Box 16070 (2930 Lakeshore Ave.), Oakland, California 94610; Telephone: (510) 250-0200; FAX: (510) 835-5117 for further information and/or copies of these orders, at your expense.

these orders, at your expense.

1. State the complete name and address of each person whose claimed exposure to asbestos is the basis of this lawsuit ("exposed person"):

**THOMAS JORGENSEN**  
**602 8<sup>TH</sup> AVE. NW**  
**PUYALLUP, WA 98371**

2. Does plaintiff anticipate filing a motion for preferential trial date within the next four months?   X   Yes        No

3. Date of birth of each exposed person in item one and, if applicable, date of death:

Date of Birth:   May 2, 1945   Date of Death:   N/A  

Social Security Number of each exposed person:   537-36-0456  

4. Specify the nature or type of asbestos-related disease alleged by each exposed person:

       Asbestosis   X   Mesothelioma  
       Pleural Thickening/Plaques        Other Cancer: Specify:                       
Lung Cancer Other Than Mesothelioma Other: Specify:                     

5. For purposes of identifying the nature of exposure allegations involved in this action, please check one or more:

       Shipyard   X   Construction        Friction-Automotive  
       Premises        Aerospace   X   Military  
       Other: Specify all that apply: Secondary Exposure

If applicable, indicate which exposure allegations apply to which exposed person.

6. Identify each location alleged to be a source of an asbestos exposure, and to the extent known, provide the beginning and ending year(s) of each such exposure. Also specify each exposed person's employer and job title or job description during each period of exposure. (For example: "San Francisco Naval Shipyard - Pipefitter - 1939-1948"). Examples of locations of exposure might be a specific shipyard, a specific railroad maintenance yard, or perhaps more

1 generalized descriptions such as "merchant Marine" or "construction." If an exposed person  
 2 claims exposure during only a portion of a year, the answer should indicate that year as the  
 3 beginning and ending year (e.g., 1947-1947).

4 5	Employer & Dates	Jobsite(s)	Job Duties
6 7 8 9 10	US Navy 1965 - 1967	USS Floyd (LST 762) San Diego, CA Hawaii Vietnam Subic Bay, AK Bay Area, CA San Francisco, CA	Interior Communications and various work detail
11 12	Pasquire Panel Products 1967 - 1968	Sumner, WA	Set up work on machinery
13 14	Armstrong Homes 1968 - 1969	Puyallup, WA	Laborer
15 16	Fox Drywall 1969 - 1973	Seattle/Tacoma, WA area Vancouver, WA	Sheetrock Worker
17 18	Gray Company 1969 - 1973	Seattle/Tacoma, WA area	Sheetrock Worker
19 20	Rick's Drywall 1969 - 1973	Seattle/Tacoma, WA area Colorado Springs, CO	Sheetrock Worker
21 22	Novel Homes 1972 - 1975	Seattle, WA	Planner & Coordinator at construction sites
23 24 25	Custom Craft Fixture 1975 - 1991	Seattle, WA San Francisco, CA Half Moon Bay, CA Various location in Southern California	Designed and built cabinetry

26 7. For each exposed person who:

27 a. worked in the United States or for a U. S. agency outside the territorial United  
 28 States, attach to the copy of this fact sheet provided to Designated Defense Counsel a fully

1 executed Social Security Earnings authorization (Exhibit N-4 to General Order No. 129);

2 b. may have had a Social Security disability award or is no longer employed and  
3 whose last employment was not with a United States government agency, attach to the copy of this  
4 fact sheet provided to Designated Defense counsel a fully executed Social Security Disability  
5 authorization (Exhibit N-5 to General Order No. 129);

6 c. served at any time in the United States military, attach to the copy of this fact sheet  
7 provided to the Designated Defense counsel two fully executed originals of the stipulation (Exhibit  
8 N-3 to General Order No. 129);

9 d. was employed by the United States government in a civilian capacity, attach to the  
10 copy of this fact sheet provided to Designated Defense counsel two fully executed originals of the  
11 stipulation (Exhibit N-3 to General Order No. 129).

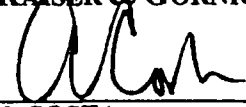
12 8. If there is a wrongful death claim, attach to the copy of this fact sheet provided to  
13 Designated Defense Counsel a copy of the death certificate, if available. If an autopsy report was  
14 done, also attach a copy of it to the copy of this fact sheet provided to Designated Defense  
15 Counsel.

16 9. State the date of the filing of the initial complaint in this matter: January 3, 2008.

17  
18 DATED: January 3, 2008

LEVIN SIMES KAISER & GORNICK, LLP

19  
20 BY

  
ANNA M. COSTA  
Attorney for Plaintiffs

# **EXHIBIT 50**



CASE NUMBER: CGC-08-274494 THOMAS JORGENSEN et al VS. A.W. CHESTERTON COM

**NOTICE TO PLAINTIFF**

A Case Management Conference is set for

**DATE: DEC-17-2008**

**TIME: 1:30PM**

**PLACE: Department 206  
400 McAllister Street  
San Francisco, CA 94102-3680**

All parties must appear and comply with Local Rule 3.3 and 3.4.

**CRC 212 (g)(1) requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference.**

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state.

**[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]**

Superior Court Alternative Dispute Resolution Coordinator  
400 McAllister Street, Room 103  
San Francisco, CA 94102  
(415) 551-3876

# SUMMONS (CITACION JUDICIAL)

SUM-100

**NOTICE TO DEFENDANT:****(AVISO AL DEMANDADO):**

A.W. CHESTERTON COMPANY;

[SEE ATTACHMENT FOR ADDITIONAL DEFENDANTS]

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)**YOU ARE BEING SUED BY PLAINTIFF:****(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

THOMAS JORGENSEN AND PATRICIA JORGENSEN

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

**Tiene 30 DÍAS DE CALENDARIO** después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia. Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SF  
400 MCALLISTER STREET

SAN FRANCISCO, CA 94102

CASE NUMBER  
(Número de caso) **BC-08-274494**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

JEFFREY A. KAISER (SBN 160594)  
LEVIN SIMES KAISER & GORNICK, LLP  
44 MONTGOMERY STREET, 36TH FLOOR  
SAN FRANCISCO, CA 94104

(415) 646-7160 415-981-1270

DATE: **JAN - 3 2008**  
(Fecha)**Gordon Park-Li**Clerk, by \_\_\_\_\_  
(Secretario)**ELIAS Bitt**, Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED: You are served**

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☒ on behalf of (specify): **Crowley Maritime Corporation**

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ other (specify):

- ☐ by personal delivery on (date):

1 Attachment to Summons

2 THOMAS JORGENSEN AND PATRICIA JORGENSEN, ) No.

3  
4 PLAINTIFFS,

5 VS.

6 A.W. CHESTERTON COMPANY;  
7 ALLIS CHALMERS CORPORATION PRODUCT  
8 LIABILITY TRUST;  
9 ASBESTOS CORPORATION, LTD.;  
10 AURORA PUMPS;  
11 CRANE CO., INDIVIDUALLY AND AS SUCCESSOR-  
12 IN-INTEREST TO CHAPMAN VALVE CO.;  
13 CROWN, CORK & SEAL, INDIVIDUALLY AND AS  
14 SUCCESSOR-IN-INTEREST TO MUNDET CORK;  
15 CYPRUS AMAX MINERALS COMPANY,  
16 INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST  
17 TO SIERRA TALC AND PAUL W. WOOD;  
18 DOWMAN PRODUCTS. INC.;  
19 ELEMENTIS CHEMICALS, INC., FORMERLY  
20 KNOWN AS HARCROS CHEMICALS, INC. A  
21 DELAWARE CORPORATION, INDIVIDUALLY AND  
22 AS SUCCESSOR-IN-INTEREST TO HARRISONS &  
23 CROSFIELD (PACIFIC);  
24 GARLOCK SEALING TECHNOLOGIES LLC,  
25 INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST  
26 TO GARLOCK, INC.;  
27 GENERAL ELECTRIC COMPANY;  
28 GEORGIA-PACIFIC CORPORATION;  
GOULDS PUMPS, INCORPORATED;  
HAMILTON MATERIALS, INC.;  
HANSON PERMANENTE CEMENT, INC., FORMERLY  
KNOWN AS KAISER CEMENT CORPORATION;  
HERCULES ENGINE COMPANY;  
HILL BROTHERS CHEMICAL COMPANY;  
ITT INDUSTRIES, INC., INDIVIDUALLY AND AS  
SUCCESSOR-IN-INTEREST TO ALLIS CHALMERS,  
CORP. AND BELL AND GOSSETT;  
KAISER GYPSUM COMPANY, INC.;  
KELLY-MOORE PAINT COMPANY, INC.;  
LAMONS GASKET COMPANY, INDIVIDUALLY, AS  
SUCCESSOR-IN-INTEREST AND PARENT ALTER  
EGO TO POWER ENGINEERING & EQUIPMENT  
COMPANY, INC.;  
OG SUPPLY, INC.;

1 PARKER-HANNIFIN CORPORATION,  
2 INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST  
3 TO SACOMO SIERRA AND SACOMO  
4 MANUFACTURING COMPANY;  
5 QUINTEC INDUSTRIES, INC.;  
6 R.T. VANDERBILT COMPANY, INC.;  
7 RICH-TEX, INC.;  
8 SAN FRANCISCO GRAVEL CO., INC.;  
9 SOCO-WEST, INC. FKA BRENNTAG WEST, INC. FKA  
10 SOCO-LYNCH CORPORATION, INDIVIDUALLY AND  
11 AS SUCCESSOR-IN-INTEREST TO WESTERN  
12 CHEMICAL & MANUFACTURING COMPANY;  
13 STONE & WEBSTER ENGINEERING  
14 CORPORATION, INDIVIDUALLY AND AS  
15 SUCCESSOR-IN-INTEREST, PARENT AND ALTER  
16 EGO TO E.B. BADGER & SONS COMPANY;  
17 T H AGRICULTURE & NUTRITION LLC  
18 INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST  
19 TO THOMPSON-HAYWARD CHEMICAL CO.;  
20 UNION CARBIDE CORPORATION;  
21 WARREN PUMPS, LLC;  
22 VIACOM, INCORPORATED AS SUCCESSOR-BY-  
23 MERGER TO CBS CORPORATION FKA  
24 WESTINGHOUSE ELECTRIC CORPORATION  
25 AND THE FIRST DOE THROUGH THREE  
26 HUNDREDTH DOE, INCLUSIVE,  
27  
28 DEFENDANTS.

NAME, ADDRESS, TELEPHONE NUMBER OF ATTORNEY(S)

ANNA M. COSTA (SBN 203741)  
 LEVIN SIMES KAISER & GORNICK, LLP  
 44 MONTGOMERY STREET, 36TH FLOOR  
 SAN FRANCISCO, CA 94104

(415) 646-7160

ATTORNEY(S) FOR: THOMAS JORGENSEN AND PATRICIA  
 JORGENSEN

SPACE BELOW FOR COURT USE ONLY

**AMENDMENT TO  
 COMPLAINT**
**SUPERIOR COURT OF CALIFORNIA,  
 COUNTY OF SAN FRANCISCO**

CASE NUMBER

CGC 08 274494

THOMAS JORGENSEN AND PATRICIA JORGENSEN

A.W. CHESTERTON COMPANY, et al.

vs.

Plaintiff(s)

Defendant(s)

**FICTITIOUS NAME [SEC. 474 C.C.P.]**

Upon filing the complaint herein, plaintiff(s) being ignorant of the true name of a defendant and having designated said defendant in the complaint by the fictitious name of:

DOE 1

and having discovered the true name of the said defendant to be:

CROWLEY MARITIME CORPORATION

hereby amends the complaint by inserting such true name in place and stead of such incorrect name wherever it appears in said complaint.

ANNA M. COSTA



Attorney(s) for plaintiff(s)

THOMAS JORGENSEN, ET AL.

**INCORRECT NAME [SEC. 473 (a)(1) C.C.P.]**

Plaintiff(s) having designated a defendant in the complaint by the incorrect name of

and having discovered the true name of the said defendant to be

hereby amend(s) the complaint by inserting such true name in place and stead of such incorrect name wherever it appears in said complaint.

Attorney(s) for Plaintiff(s)

**ORDER**

Proper cause appearing, the above amendment to the complaint is allowed.

Dated: \_\_\_\_\_

Judge \_\_\_\_\_

# **EXHIBIT 51**

1 JEFFREY A. KAISER, ESQ. [SBN 160594]  
2 ANNA M. COSTA, ESQ. [SBN 203741]  
3 LEVIN SIMES KAISER & GORNICK, LLP  
4 44 MONTGOMERY STREET, 36<sup>TH</sup> FLOOR  
5 SAN FRANCISCO, CALIFORNIA 94104  
6 TELEPHONE (415) 646-7160  
7 FACSIMILE (415) 981-1270

ATTORNEYS FOR PLAINTIFFS

THOMAS JORGENSEN AND PATRICIA JORGENSEN

ENDORSED  
FILED  
SAN FRANCISCO COUNTY  
SUPERIOR COURT

2008 JAN -3 AM 12:37

GORDON PARNELL, CLERK

BY: ELIAS BUTT  
DEPUTY CLERK

CASE MANAGEMENT CONFERENCE SET

THIS CASE IS SUBJECT TO SUPERIOR COURT OF CALIFORNIA  
MANDATORY ELECTRONIC FILING COUNTY OF SAN FRANCISCO  
PURSUANT TO AMENDED G.O. 158 (UNLIMITED JURISDICTION)

DEC 17 2008 -1:30PM

DEPARTMENT 206

10  
11 THOMAS JORGENSEN AND PATRICIA JORGENSEN, )

12 PLAINTIFFS, )

13 VS. )

14 A. W. CHESTERTON COMPANY; )  
15 ALLIS CHALMERS CORPORATION PRODUCT )  
16 LIABILITY TRUST; )  
17 ASBESTOS CORPORATION, LTD.; )  
18 AURORA PUMPS; )  
19 CRANE CO., INDIVIDUALLY AND AS SUCCESSOR- )  
20 IN-INTEREST TO CHAPMAN VALVE CO.; )  
21 CROWN, CORK & SEAL, INDIVIDUALLY AND AS )  
22 SUCCESSOR-IN-INTEREST TO MUNDET CORK; )  
23 CYPRUS AMAX MINERALS COMPANY, )  
24 INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST )  
25 TO SIERRA TALC AND PAUL W. WOOD; )  
26 DOWMAN PRODUCTS, INC.; )  
27 ELEMENTIS CHEMICALS, INC., FORMERLY )  
28 KNOWN AS HARCROS CHEMICALS, INC. A )  
DELAWARE CORPORATION, INDIVIDUALLY AND )  
AS SUCCESSOR-IN-INTEREST TO HARRISONS & )  
CROSFIELD (PACIFIC); )  
GARLOCK SEALING TECHNOLOGIES LLC, )  
INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST )  
TO GARLOCK, INC.; )  
GENERAL ELECTRIC COMPANY; )  
GEORGIA-PACIFIC CORPORATION; )  
GOULDS PUMPS, INCORPORATED; )  
HAMILTON MATERIALS, INC.; )  
HANSON PERMANENTE CEMENT, INC., FORMERLY )

No. CGC -08-274494

COMPLAINT FOR  
DAMAGES

NEGLIGENCE,  
STRICT LIABILITY,  
PUNITIVE DAMAGES,  
LOSS OF CONSORTIUM,

(ASBESTOS)

1 KNOWN AS KAISER CEMENT CORPORATION;  
 2 HERCULES ENGINE COMPANY;  
 3 HILL BROTHERS CHEMICAL COMPANY;  
 4 ITT INDUSTRIES, INC., INDIVIDUALLY AND AS  
 5 SUCCESSOR-IN-INTEREST TO ALLIS CHALMERS,  
 6 CORP. AND BELL AND GOSSETT;  
 7 KAISER GYPSUM COMPANY, INC.;  
 8 KELLY-MOORE PAINT COMPANY, INC.;  
 9 LAMONS GASKET COMPANY, INDIVIDUALLY, AS  
 10 SUCCESSOR-IN-INTEREST AND PARENT ALTER  
 11 EGO TO POWER ENGINEERING & EQUIPMENT  
 12 COMPANY, INC.;  
 13 OG SUPPLY, INC.;  
 14 PARKER-HANNIFIN CORPORATION,  
 15 INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST  
 16 TO SACOMO SIERRA AND SACOMO  
 17 MANUFACTURING COMPANY;  
 18 QUINTEC INDUSTRIES, INC.;  
 19 R.T. VANDERBILT COMPANY, INC.;  
 20 RICH-TEX, INC.;  
 21 SAN FRANCISCO GRAVEL CO., INC.;  
 22 SOCO-WEST, INC. FKA BRENNTAG WEST, INC. FKA  
 23 SOCO-LYNCH CORPORATION, INDIVIDUALLY AND  
 24 AS SUCCESSOR-IN-INTEREST TO WESTERN  
 25 CHEMICAL & MANUFACTURING COMPANY;  
 26 STONE & WEBSTER ENGINEERING  
 27 CORPORATION, INDIVIDUALLY AND AS  
 28 SUCCESSOR-IN-INTEREST, PARENT AND ALTER  
 EGO TO E.B. BADGER & SONS COMPANY;  
 T H AGRICULTURE & NUTRITION LLC  
 INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST  
 TO THOMPSON-HAYWARD CHEMICAL CO.;  
 UNION CARBIDE CORPORATION;  
 WARREN PUMPS, LLC;  
 VIACOM, INCORPORATED AS SUCCESSOR-BY-  
 MERGER TO CBS CORPORATION FKA  
 WESTINGHOUSE ELECTRIC CORPORATION  
 AND THE FIRST DOE THROUGH THREE  
 HUNDREDTH DOE, INCLUSIVE,

DEFENDANTS.

#### GENERAL ALLEGATIONS

1. The true names and capacities, whether individual, corporate, associate,  
 governmental or otherwise, of defendants FIRST DOE through THREE HUNDREDTH DOE,



1 inclusive, are unknown to plaintiffs at this time, who therefore sue said defendants by such  
2 fictitious names. When the true names and capacities of said defendants have been ascertained,  
3 plaintiffs will amend this complaint accordingly. Plaintiffs are informed and believe, and thereon  
4 allege, that each defendant designated herein as a DOE is responsible, negligently or in some other  
5 actionable manner, for the events and happenings hereinafter referred to, and caused injuries and  
6 damages proximately thereby to the Plaintiffs, as hereinafter alleged.

8 2. At all times herein mentioned, each of the defendants, except as otherwise alleged,  
9 was the agent, servant, employee and/or joint venturer of her co-defendants, and each of them, and  
10 at all said times, each defendant was acting in the full course and scope of said agency, service,  
11 employment and/or joint venture. Plaintiffs do not allege that Asbestos Corporation Ltd. was the  
12 agent, servant, employee and/or joint venturer of any entity during any of the years Asbestos  
13 Corporation Ltd. was owned by any governmental agency. Certain defendants agreed and  
14 conspired among themselves, and with certain other individuals and/or entities, to act, or not to  
15 act, in such a manner that resulted in injury to the Plaintiff, THOMAS JORGENSEN; and such  
16 defendants, as co-conspirators, are liable for the acts, or failures to act, of other conspiring  
17 defendants. Plaintiffs do not allege that Asbestos Corporation Ltd. conspired with any entity  
18 during any of the years Asbestos Corporation Ltd. was owned by any governmental agency.

21 3. Plaintiffs are informed and believe, and thereon allege, that at all times herein  
22 mentioned, defendants, **A. W. CHESTERTON COMPANY; ALLIS CHALMERS**  
23 **CORPORATION PRODUCT LIABILITY TRUST; ASBESTOS CORPORATION, LTD.;**  
24 **AURORA PUMPS; CRANE CO., INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST**  
25 **TO CHAPMAN VALVE CO.; CROWN, CORK & SEAL, INDIVIDUALLY AND AS**  
26 **SUCCESSOR-IN-INTEREST TO MUNDET CORK; CYPRUS AMAX MINERALS**  
27 **COMPANY, INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO SIERRA TALC**  
28

1 AND PAUL W. WOOD; DOWMAN PRODUCTS. INC.; ELEMENTIS CHEMICALS,  
2 INC., FORMERLY KNOWN AS HARCROS CHEMICALS, INC. A DELAWARE  
3 CORPORATION, INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO  
4 HARRISONS & CROSFIELD (PACIFIC); GARLOCK SEALING TECHNOLOGIES  
5 LLC, INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO GARLOCK, INC.;  
6 GENERAL ELECTRIC COMPANY; GEORGIA-PACIFIC CORPORATION; GOULDS  
7 PUMPS, INCORPORATED; HAMILTON MATERIALS, INC.; HANSON  
8 PERMANENTE CEMENT, INC., FORMERLY KNOWN AS KAISER CEMENT  
9 CORPORATION; HERCULES ENGINE COMPANY; HILL BROTHERS CHEMICAL  
10 COMPANY; ITT INDUSTRIES, INC., INDIVIDUALLY AND AS SUCCESSOR-IN-  
11 INTEREST TO ALLIS CHALMERS, CORP. AND BELL AND GOSSETT; KAISER  
12 GYPSUM COMPANY, INC.; KELLY-MOORE PAINT COMPANY, INC.; LAMONS  
13 GASKET COMPANY, INDIVIDUALLY, AS SUCCESSOR-IN-INTEREST AND PARENT  
14 ALTER EGO TO POWER ENGINEERING & EQUIPMENT COMPANY, INC.; OG  
15 SUPPLY, INC.; PARKER-HANNIFIN CORPORATION, INDIVIDUALLY AND AS  
16 SUCCESSOR-IN-INTEREST TO SACOMO SIERRA AND SACOMO  
17 MANUFACTURING COMPANY; QUINTEC INDUSTRIES, INC.; R.T. VANDERBILT  
18 COMPANY, INC.; RICH-TEX, INC.; SAN FRANCISCO GRAVEL CO., INC.; SOCO-  
19 WEST, INC. FKA BRENNTAG WEST, INC. FKA SOCO-LYNCH CORPORATION,  
20 INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO WESTERN CHEMICAL &  
21 MANUFACTURING COMPANY; STONE & WEBSTER ENGINEERING  
22 CORPORATION, INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST, PARENT  
23 AND ALTER EGO TO E.B. BADGER & SONS COMPANY; T H AGRICULTURE &  
24 NUTRITION LLC INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO  
25  
26  
27  
28

1 **THOMPSON-HAYWARD CHEMICAL CO.; UNION CARBIDE CORPORATION;**  
2 **WARREN PUMPS, LLC; VIACOM, INCORPORATED AS SUCCESSOR-BY-MERGER**  
3 **TO CBS CORPORATION FKA WESTINGHOUSE ELECTRIC CORPORATION AND**  
4 **THE FIRST DOE THROUGH THREE HUNDREDTH DOE**, inclusive, are corporations  
5 organized and existing under and by virtue of the laws of the State of California, or the laws of  
6 some state or foreign jurisdiction, and that said defendants were and are authorized to do and are  
7 doing business in the State of California, and that said defendants have regularly conducted  
8 business in the City and County of San Francisco, State of California. The defendants identified in  
9 this paragraph are collectively hereinafter referred to as "ASBESTOS DEFENDANTS."  
10

11 4. At all times herein mentioned, each of the **ASBESTOS DEFENDANTS** was the  
12 successor, successor in business, successor in product line or a portion thereof, parent, subsidiary,  
13 wholly or partially owned by, or the whole or partial owner of or member in an entity researching,  
14 studying, manufacturers, fabricating, designing, labeling, assembling, distributing, leasing, buying,  
15 offering for sale, selling, inspecting, servicing, installing, contracting for installation, repairing,  
16 marketing, warranting, rebranding, handling, modifying, scraping, disturbing, manufacturing for  
17 others, packaging and/or advertising a certain substance the generic name for which is asbestos,  
18 and other products containing said substance. Said entities shall hereinafter collectively be called  
19 "alternate entities". Each of the herein named **ASBESTOS DEFENDANTS** are liable for the  
20 tortuous conduct of each successor, successor in business, successor in product line or a portion  
21 thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion  
22 thereof, parent, subsidiary, alter-ego, whole of partial owner, or wholly or partially owned entity,  
23 or entity that it as a member of, or funded, that researched, studied, manufactured, fabricated,  
24 designed, labeled, assembled, distributed, leased, bought, offered for sale, sold, inspected,  
25 serviced, installed, contracted for installation, repaired, marketed, warranted, rebranded,  
26  
27  
28

1 manufactured for others and advertised a certain substance, the generic name of which is asbestos,  
 2 and other products containing said substance. The following **ASBESTOS DEFENDANTS**, and  
 3 each of them, are liable for the acts of each and every "alternate entity", and each of them, in that  
 4 there has been a virtual destruction of Plaintiffs remedy against each such "alternate entity";  
 5 **ASBESTOS DEFENDANTS**, and each of them, have acquired the assets, product line, or  
 6 apportion thereof, of each such "alternate entity"; **ASBESTOS DEFENDANTS**, and each of  
 7 them, caused the destruction of Plaintiffs remedy against each such "alternate entity"; each such  
 8 **ASBESTOS DEFENDANTS** has the ability to assume the risk-spreading role of each such  
 9 "alternate entity"; and that each such **ASBESTOS DEFENDANTS** enjoys the goodwill originally  
 10 attached to each such "alternate entity".  
 11

DEFENDANTALTERNATE ENTITY

14 CRANE CO.	CHAPMAN VALVE CO.
15 CROWN, CORK & SEAL	MUNDET CORK
16 CYPRUS AMAX MINERALS COMPANY	SIERRA TALC AND PAUL W. WOOD
17 ELEMENTIS CHEMICALS, INC.	HARCROS CHEMICALS, INC. A 18 DELAWARE CORPORATION, 19 INDIVIDUALLY AND AS SUCCESSOR-IN- 20 INTEREST TO HARRISONS & CROSFIELD (PACIFIC)
21 GARLOCK SEALING TECHNOLOGIES LLC	GARLOCK, INC.
22 HANSON PERMANENTE CEMENT, INC.	KAISER CEMENT CORPORATION
23 ITT INDUSTRIES, INC.	ALLIS CHALMERS, CORP. AND BELL 24 AND GOSSETT
25 LAMONS GASKET COMPANY	POWER ENGINEERING & EQUIPMENT 26 COMPANY, INC.
27 PARKER-HANNIFIN CORPORATION	SACOMO SIERRA AND SACOMO 28 MANUFACTURING COMPANY

1	SOCO-WEST, INC.	BRENNTAG WEST, INC. FKA SOCO-
2		LYNCH CORPORATION, INDIVIDUALLY
3		AND AS SUCCESSOR-IN-INTEREST TO
4		WESTERN CHEMICAL &
5		MANUFACTURING COMPANY.
6	STONE & WEBSTER ENGINEERING	E.B. BADGER & SONS COMPANY
7	CORPORATION	
8	T H AGRICULTURE & NUTRITION LLC	THOMPSON-HAYWARD CHEMICAL CO.
9	VIACOM, INCORPORATED	CBS CORPORATION FKA
10		WESTINGHOUSE ELECTRIC
11		CORPORATION

# **FIRST CAUSE OF ACTION-NEGLIGENCE**

## **(Personal Injuries)**

PLAINTIFF THOMAS JORGENSEN COMPLAINS OF DEFENDANTS, AND EACH OF THEM AND FOR A CAUSE OF ACTION FOR NEGLIGENCE (PERSONAL INJURIES) ALLEGES:

5. Plaintiff realleges and incorporates herein by reference each of the proceeding paragraphs of this Complaint.

6. At all times herein mentioned, the **ASBESTOS DEFENDANTS** and each of them were engaged in the business of manufacturing, fabricating, designing, assembling, distributing, leasing, buying, selling, inspecting, servicing, repairing, distributing, modifying, handling, installing, contracting to install, removing, contracting to remove, disturbing, cutting, grinding, scraping, marketing, warranting and/or advertising a certain substance, the generic name of which is asbestos, and/or other products containing said substance, or are engaged in the business of manufacturing, fabricating, designing, assembling, distributing, selling, and marketing of safety equipment, including respiratory protective devices which were intended to block the entry of asbestos fibers into the bodies of workers who were exposed to asbestos in the workplace and

1 other locations.

2 7. At all times herein mentioned, the **ASBESTOS DEFENDANTS**, and each of them,  
3 singularly and jointly, negligently and carelessly researched, tested or failed to test, warned or  
4 failed to warn, manufactured and/or caused to be manufactured, designed, developed, distributed,  
5 supplied, removed, abated, tore out, drilled, dug out, threw away, discarded, swept up, labeled,  
6 advertised, marketed, warranted, inspected, repaired, installed, scraped, cut, ground, distributed,  
7 handled, fabricated, assembled, modified, serviced, and/or sold a certain substance, the generic  
8 name of which is asbestos, and/or other products containing said substance, and said substance  
9 was capable of causing and did, in fact, proximately cause personal injuries to users, consumers,  
10 workers and others, while being used in a manner reasonably foreseeable, thereby rendering said  
11 substances unsafe and dangerous for use by the consumers, users, bystanders or workers exposed  
12 thereto;  
13

14 8. At all times herein mentioned, the **ASBESTOS DEFENDANTS**, and each of them  
15 manufactured, distributed, sold and/or designed products to be used with asbestos, and/or other  
16 products containing said substance. Each **ASBESTOS DEFENDANT** manufactured, distributed,  
17 sold and/or designed products in such a manner that it required the regular replacement of asbestos  
18 and/or other materials containing asbestos. Moreover, each **ASBESTOS DEFENDANT**  
19 defectively designed, sold, manufactured and/or distributed products which caused the degradation  
20 of integrated asbestos-containing products, which contributed to plaintiff's development of  
21 mesothelioma. This being so, even despite the fact that alternative feasible designs were available  
22 that would not cause degradation and release of asbestos fibers from the original and replacements  
23 asbestos materials to the same extent as the design chosen by **ASBESTOS DEFENDANTS**.  
24

25 9. It was foreseeable to each **ASBESTOS DEFENDANT** that the original asbestos and  
26 other materials containing asbestos would be removed and replaced with new asbestos and/or  
27  
28

1 other materials containing asbestos during ordinary operation and maintenance. Indeed, during the  
2 time period in question, most if not all, replacement materials were comprised of asbestos. The  
3 operation, use and repair of each of the ASBESTOS DEFENDANTS products would affect both  
4 the original and replacement asbestos and other products containing asbestos by making them  
5 brittle, friable and not reusable. It was foreseeable to each ASBESTOS DEFENDANT that the  
6 process of removing asbestos materials incorporated into their products and replacing them with  
7 new asbestos materials during ordinary repair and maintenance would disturb asbestos and result  
8 in the release of asbestos fibers into the air, thereby exposing Plaintiff, other workers and  
9 bystanders. EACH ASBESTOS DEFENDANT failed to warn Plaintiff, other workers and  
10 bystanders of the risks inherent in the replacement of asbestos containing parts and failed to warn  
11 Plaintiff, other workers and bystanders that their product was designed to make asbestos friable.  
12

13  
14 10. Plaintiff herein is a worker who for or during a substantial length of time used,  
15 handled or has been otherwise exposed to the asbestos and asbestos products referred to herein in a  
16 manner that was reasonably foreseeable.

17 11. As a direct and proximate result of the conduct of the ASBESTOS  
18 DEFENDANTS, and each of them, as aforesaid, the exposure to asbestos caused severe and  
19 permanent malignant injuries to the Plaintiff, including, but not limited to, mesothelioma and other  
20 lung damage.  
21

22 12. Plaintiff is informed and believes, and thereon alleges, that mesothelioma is a  
23 progressive lung disease caused by inhalation of asbestos fibers without perceptible trauma and  
24 that said disease results from exposure to asbestos and asbestos products over a period of time.

25 13. Plaintiff presently believes that he suffers from a medical condition known as  
26 mesothelioma, a lung disease related to the exposure to asbestos. Plaintiff was not aware that  
27 exposure to asbestos presented any risk of injury and/or disease to him, and had not been advised  
28

1 or informed by anyone that he could contract any disease, sickness or injury as a result of working  
2 in the vicinity of asbestos.

3 14. As a direct and proximate result of the aforesaid conduct of **ASBESTOS**  
4 **DEFENDANTS**, and each of them, Plaintiff is dying and has suffered, and continues to suffer  
5 permanent non-malignant injuries to his person, body and health, including but not limited to  
6 mesothelioma, other lung damage, all to his general damages in a sum invoking the unlimited  
7 jurisdiction of the Court.

8 15. As a direct and proximate result of the aforesaid conduct of the **ASBESTOS**  
9 **DEFENDANTS**, and each of them, Plaintiff has incurred, is presently incurring and will incur in  
10 the future, liability for physicians, surgeons, nurses, hospital care, medicine, hospitals, x-rays and  
11 other medical treatment, the true and exact amount thereof being unknown to Plaintiff at this time,  
12 and Plaintiff prays leave to amend this Complaint accordingly when the true and exact cost thereof  
13 is ascertained.

14 16. Plaintiff THOMAS JORGENSEN has lost pre-judgment interest pursuant to Civil  
15 Code Section 3288, the exact amount of which Plaintiff prays leave to insert herein when finally  
16 ascertained.

17 17. In researching, testing, manufacturing, distributing, labeling, and marketing said  
18 products, **ASBESTOS DEFENDANTS** in this cause of action named, and each of them, did so  
19 with conscious disregard for the safety of the users of said products, in that **ASBESTOS**  
20 **DEFENDANTS** had specific prior knowledge that there was a high risk of injury or death  
21 resulting from exposure to asbestos or asbestos products, including but not limited to  
22 mesothelioma. Said knowledge was obtained, in part, from scientific studies, government data,  
23 and medical data to which **ASBESTOS DEFENDANTS** had access, as well as scientific studies  
24 performed by, at the request of, or with the assistance of, said **ASBESTOS DEFENDANTS**, and  
25  
26  
27  
28



1 which knowledge was obtained by said **ASBESTOS DEFENDANTS** on or before 1933, and  
2 thereafter.

3 18. On or before 1933, and thereafter, said **ASBESTOS DEFENDANTS** were aware  
4 that users of asbestos and asbestos products, as well as members of the general public who would  
5 be exposed to asbestos and asbestos products, had no knowledge or information indicating that  
6 asbestos could cause injury, and said **ASBESTOS DEFENDANTS** knew that the users of  
7 asbestos and asbestos products, as well as members of the general public who were exposed to  
8 asbestos and asbestos products, would assume, and in fact did assume, that exposure to asbestos  
9 and asbestos products was safe, when in fact said exposure was extremely hazardous to human  
10 life.  
11

12 19. With said knowledge, said **ASBESTOS DEFENDANTS** opted to manufacture and  
13 distribute said asbestos and asbestos products without attempting to protect users from or warn  
14 users of, the high risk of injury or death resulting from exposure to asbestos and asbestos products.  
15 Rather than attempting to protect users and workers from, or warn workers and users of, the high  
16 risk of injury or death resulting from exposure to asbestos and asbestos products, **ASBESTOS**  
17 **DEFENDANTS** intentionally failed to reveal their knowledge of said risk, fraudulently,  
18 consciously and actively concealed and suppressed said knowledge from members of the general  
19 public that asbestos and asbestos products were unsafe for all reasonably foreseeable use, with the  
20 knowledge of the falsity of said implied representations.  
21

22 20. The above referenced conduct of said **ASBESTOS DEFENDANTS** was  
23 motivated by the financial interest of said **ASBESTOS DEFENDANTS** in the continuing,  
24 uninterrupted distribution and marketing of asbestos and asbestos products. In pursuance of said  
25 financial motivation, said **ASBESTOS DEFENDANTS** consciously disregarded the safety of the  
26 users of, and persons exposed to, asbestos and asbestos products, and were in fact, consciously  
27  
28

1 willing to permit asbestos and asbestos products to cause injury to workers and users thereof, and  
2 persons exposed thereto, including Plaintiff.

3 21. As the above referenced conduct of said **ASBESTOS DEFENDANTS** was and is  
4 vile, base, willful, malicious, fraudulent, oppressive, outrageous, and in conscious disregard and  
5 indifference to the safety and health of workers exposed to asbestos and asbestos products,  
6 including Plaintiff, Plaintiff, for the sake of example, and by way of punishing said **ASBESTOS**  
7 **DEFENDANTS**, seeks punitive damages according to proof.

9 WHEREFORE, Plaintiff prays judgment against **ASBESTOS DEFENDANTS**, and each  
10 of them, as hereafter set forth.

11 **SECOND CAUSE OF ACTION - STRICT LIABILITY**

12 AS AND FOR A SECOND, SEPARATE, FURTHER AND DISTINCT CAUSE OF  
13 ACTION FOR STRICT LIABILITY, PLAINTIFF COMPLAINS OF THE **ASBESTOS**  
14 **DEFENDANTS** AND EACH OF THEM, AND ALLEGES AS FOLLOWS:

15 22. Plaintiffs reallege and incorporate herein by reference each of the proceeding  
16 paragraphs of this Complaint.

17 23. **ASBESTOS DEFENDANTS** and each of them, researched, manufactured, tested  
18 or failed to test, warned or failed to warn, designed, labeled, distributed, advertised, marketed,  
19 warranted, distributed, handled, installed, modified, scraped, inspected, repaired, offered for sale  
20 and sold a certain substance, the generic name of which is asbestos and other products containing  
21 said substance, which substance is defective, in that same was capable of causing and did, in fact,  
22 cause personal injuries, including mesothelioma and other lung damage, to the users and  
23 consumers thereof while being used in a reasonably foreseeable manner, thereby rendering the  
24 same unsafe and dangerous for use by consumers, users, bystanders and workers exposed thereto;  
25 said **ASBESTOS DEFENDANTS**, and each of them, further failed to adequately warn of the  
26 risks to which Plaintiff and others similarly situated were exposed.  
27  
28

1           24. At all times herein mentioned, the **ASBESTOS DEFENDANTS**, and each of them  
2 were aware that the original gaskets and packing supplied with their equipment would need to be  
3 removed and replaced with new gaskets and packing during ordinary operation and maintenance of  
4 their equipment. Heat and pressure generated by operation would affect the original and  
5 replacement gaskets and packing – e.g., making them brittle, friable and not reusable, making  
6 replacement necessary and dangerous. It was foreseeable that the process of removing old gaskets  
7 and packing, and replacing them with the new materials during ordinary maintenance operations  
8 would disturb the asbestos materials, releasing asbestos into the air.

9           25. As a direct and proximate result thereof, Plaintiff has suffered the injuries and  
10 damages as previously set forth including those alleged in the First and Second Causes of Action,  
11 inclusive.

12                   **THIRD CAUSE OF ACTION – LOSS OF CONSORTIUM**

13           AS AND FOR A FURTHER, THIRD, SEPARATE AND DISTINCT CAUSE OF  
14 ACTION FOR LOSS OF CONSORTIUM, PLAINTIFF PATRICIA JORGENSEN COMPLAINS  
15 OF **ASBESTOS DEFENDANTS** AND EACH OF THEM AND ALLEGES AS FOLLOWS:

16           26. Plaintiff PATRICIA JORGENSEN incorporates herein by reference and makes a  
17 part hereof as though fully set forth herein, in the First and Second Causes of Action of this  
18 Complaint.

19           27. Plaintiff PATRICIA JORGENSEN is now, and at times herein mentioned, the  
20 lawfully wedded spouse of THOMAS JORGENSEN.

21           28. As a direct and proximate result of the acts of **ASBESTOS DEFENDANTS**, and  
22 each of them, as set forth and incorporated herein by reference, and the severe injuries caused  
23 thereby to THOMAS JORGENSEN as alleged in his Complaint, Plaintiff PATRICIA  
24 JORGENSEN has suffered, and for a long period of time will continue to suffer loss of  
25 consortium, including but not by way of limitation, loss of services, marital relations, society,  
26 comfort, companionship, love and affection of her said spouse, and has suffered severe mental and  
27 emotional distress and general nervousness as a result thereof.

28           29. Plaintiff PATRICIA JORGENSEN, as a result of the foregoing described injuries to

1 her said spouse, has been generally damaged in a sum in excess of the jurisdictional limits of the  
2 Municipal Court:

3 WHEREFORE, Plaintiffs THOMAS JORGENSEN AND PATRICIA JORGENSEN prays  
4 judgment against **ASBESTOS DEFENDANTS**, and each of them, as follows:

- 5 1. For Plaintiff's general damages according to proof;
- 6 2. For Plaintiff THOMAS JORGENSEN'S medical and related expenses according to  
7 proof;
- 8 3. For Plaintiff's prejudgment interest according to proof, pursuant to Civil Code  
9 section 3288;
- 10 4. For loss of income according to proof;
- 11 5. For Plaintiff's costs of suit herein;
- 12 6. For loss of care, comfort and society;
- 13 7. As to those **ASBESTOS DEFENDANTS** named in the First Cause of Action, for  
14 exemplary or punitive damages according to proof; and
- 15 8. For such other and further relief as this Court deems just and proper.

16 DATED: January 3, 2008

17 LEVIN SIMES KAISER & GORNICK, LLP

18  
19 By: 

20 ANNA M. COSTA  
21 Attorney for Plaintiffs  
22 THOMAS JORGENSEN AND PATRICIA JORGENSEN  
23  
24  
25  
26  
27  
28

**LexisNexis File & Serve Transaction Receipt**

**Transaction ID:** 18028261  
**Submitted by:** John Vincent, Levin Simes Kaiser & Gornick LLP-San Francisco  
**Authorized by:** Anna M Costa, Levin Simes Kaiser & Gornick LLP-San Francisco  
**Authorize and file on:** Jan 14 2008 12:28PM PST

**Court:** CA Superior Court County of San Francisco  
**Division/Courtroom:** N/A  
**Case Class:** Civil  
**Case Type:** Personal Injury-Asbestos  
**Case Number:** 274494  
**Case Name:** Jorgensen, Thomas et al vs A W Chesterton Co et al (Levin Simes)

**Transaction Option:** File Only  
**Billing Reference:** 6177

**Documents List****1 Document(s)****Attached Document, 1 Pages Document ID: 21582864**[PDF Format](#) | [Original Format](#)**Document Type:**  
Amendment to Complaint**Access:**  
Public**Statutory Fee:**  
\$0.00**Linked:****Document title:**  
Doe 1: Crowley Maritime Corporation[Expand All](#)☐ **Sending Parties (1)**

Party	Party Type	Attorney	Firm	Attorney Type
Jorgensen, Thomas	Plaintiff	Kaiser, Jeffrey A	Levin Simes Kaiser & Gornick LLP-San Francisco	Attorney In Charge

☐ **Recipients (0)**☐ **Service List (0)**

**Delivery Option Party Party Type Attorney Firm Method**  
 No selections made.

☐ **Additional Recipients (0)**☐ **Case Parties**

Party	Party Type	Attorney	Firm	Attorney Type
A W Chesterton Co	Defendant	Goetz, Andy J	Prindle Decker & Amaro LLP-Long Beach	Attorney In Charge
A W Chesterton Co	Defendant	Barooshian, Jon S	Cooley Manion Jones LLP-Boston	Attorney In Charge
Allis Chalmers Corp	Defendant	Pike, Gregory D	Knox Ricksen LLP	Attorney In Charge
Asbestos Corp Ltd	Defendant	Robinson, Ralph	Wilson Elser Moskowitz Edelman & Dicker LLP-San Francisco	Attorney In Charge
Aurora Pump Co	Defendant	Counsel, Asbestos SB-SF	Selman Breitman LLP-San Francisco	Attorney In Charge
Crane Co	Defendant	Gill, Raymond L	Kirkpatrick & Lockhart Preston Gates Ellis LLP-San Francisco	Attorney In Charge
Crown Cork & Seal Co Inc	Defendant	Armstrong, William	Armstrong & Associates LLP-Oakland	Attorney In Charge
Cyprus Amax Minerals Co	Defendant	Jackson, Warren	Kasowitz Benson Torres & Friedman LLP-San Francisco	Attorney In Charge

Designated Defense Counsel	Defendant	Counsel, Asbestos B&B	Berry & Berry	Attorney In Charge
Dowman Products Inc	Defendant	Counsel, Asbestos WFBM	Walsworth Franklin Bevins & McCall-Orange	Attorney in Charge
Elementis Chemicals Inc	Defendant	Armstrong, William	Armstrong & Associates LLP-Oakland	Attorney In Charge
Garlock Sealing Technologies Inc	Defendant	Clarke, Kevin M	Glaspy & Glaspy	Attorney in Charge
Georgia Pacific Corp	Defendant	Biderman, David T	Perkins Coie LLP-San Francisco	Attorney In Charge
Goulds Pumps Inc	Defendant	Crosby, Thomas	Crosby & Rowell LLP	Attorney in Charge
Hamilton Materials Inc	Defendant	Counsel, Asbestos WFBM	Walsworth Franklin Bevins & McCall-Orange	Attorney in Charge
Hanson Permanente Cement Inc	Defendant	Hamblett, Robert M	Hassard Bonnington LLP	Attorney in Charge
Hercules Engines Inc	Defendant	No Answer on File	Firm TBD	Attorney in Charge
Hill Brothers Chemical Co	Defendant	Counsel, Asbestos Ve	Vasquez & Estrada LLP	Attorney in Charge
I T T Industries Inc	Defendant	Oberg, Lisa	McKenna Long & Aldridge LLP-San Francisco	Attorney in Charge
I T T Industries Inc	Defendant	Wallace, John R	Jackson & Wallace-San Francisco	Attorney in Charge
Jorgensen, Thomas	Plaintiff	Kaiser, Jeffrey A	Levin Simes Kaiser & Gornick LLP-San Francisco	Attorney in Charge
Kaiser Gypsum Co Inc	Defendant	Hamblett, Robert M	Hassard Bonnington LLP	Attorney in Charge
Kelly Moore Paint Co Inc	Defendant	Sun, Tsun-Chi Eric	Foley & Mansfield PLLP-Oakland	Attorney in Charge
Lamons Gasket Co	Defendant	Counsel, Asbestos Ve	Vasquez & Estrada LLP	Attorney in Charge
N/A	N/A	Judge, Asbestos	CA Superior Court County of San Francisco	N/A
O G Supply Inc	Defendant	Buty, Madeline	Buty & Curliano LLP	Attorney In Charge
Parker Hannifin Corp	Defendant	Nova, Peter	Nova, Peter	Attorney in Charge
Quintec Industries Inc	Defendant	Counsel, Asbestos WFBM	Walsworth Franklin Bevins & McCall-Orange	Attorney In Charge
R T Vanderbilt Co Inc	Defendant	Oberg, Lisa	McKenna Long & Aldridge LLP-San Francisco	Attorney in Charge
Rich Tex Inc	Defendant	Cordery, Theodore T	Imal Tadlock Keeney & Cordery LLP	Attorney In Charge
San Francisco Gravel Co Inc	Defendant	Krinsky, Mark Peter	Krinsky, Mark P	Attorney in Charge
Soco West Inc	Defendant	Johnson, Derek S	Sedgwick Detert Moran & Arnold LLP-San Francisco	Attorney in Charge
Stone & Webster Engineering Corp	Defendant	No Answer on File	Firm TBD	Attorney in Charge
T H Agriculture & Nutrition Llc	Defendant	Yee, Laura Patricia	Knott & Glazier LLP	Attorney in Charge
Union Carbide Corp	Defendant	Counsel, Asbestos BHP	Brydon Hugo & Parker-San Francisco	Attorney in Charge
Warren Pumps Llc	Defendant	Cunningham, James Patrick	Carroll Burdick & McDonough LLP-San Francisco	Attorney in Charge